

2018 Winter Webinar


Criminal Case and Legislative Update

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December 2018




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Roadmap



- Legislation
- Stops
- Searches
- Crimes
- Criminal Procedure
- Evidence
- Sentencing

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New Arson Offenses, p. 2

- New Class D Arson—burn or explode ANY building, structure, or conveyance during commission of a felony where damage exceeds 10K
- Expanded statute for arson resulting in serious injury to EMT/firefighters—now includes LEOs, fire investigators



Drug Trafficking: Opioids, p. 4

- Existing law: Covered opium and opiates
- New law (S.L. 2018-44)

~~opium or opiate~~, opium, opiate, or opioid.

- Will now cover synthetics, like fentanyl
- Effective for offenses committed on or after December 1, 2018



New Drug Offenses, p. 4

- Delete MDPV trafficking and substitute broader 'cathinones' language
- New felony—unlawful diversion of c/s by employees of practitioners
- New felony—unlawful access of c/s reporting database



Threats of mass violence, p. 7

New G.S. 14-277.6 makes it a Class H felony for a person to

- by any means of communication
- to any person or group of people
- threaten to commit an act of mass violence as defined in G.S. 14-277.5
- on educational property or at a curricular or extracurricular activity sponsored by a school

New G.S. 14-277.7 applies to same acts directed at a place of worship

- Effective December 1, 2018



Certificates of Relief, p. 10

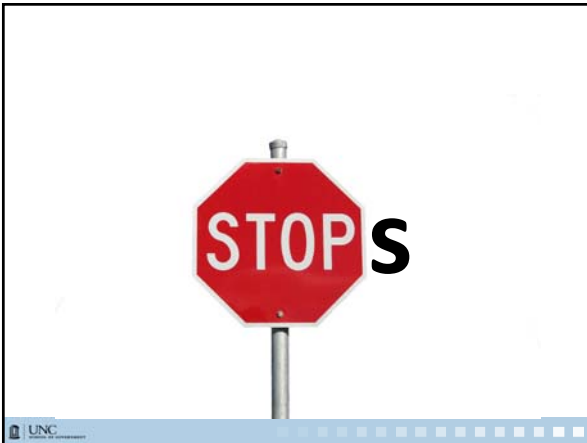
- Amended statute allows relief for persons with up to 3 class H or I felonies or any misdemeanor
- Removes class G felonies from list of eligible charges; only class H and below now.



New Prisoner Offenses, p. 6

- New definition of “prisoner”: Anyone in custody of DPS, DJJ, DAC, any LEO, or any jail, for any reason
- Expands offense of malicious conduct by prisoner to include “unknown substances”
- Special sentencing provision





State v. Baskins, p. 3

HIGH POINT NC 27265-2105 PLT STATUS: EXPIRED
 CURRENT PLATE NO: CAD5127 WGT: ISSUE DT: 09262013 VALID THRU: 10152014
 INS CO: ALLSTATE INSURANCE COMPANY POLICY: 935888760
 END OF MESSAGE



State v. Baskins, p. 3

- Trial court denies MTS
 - If officers were mistaken, that was a reasonable mistake
 - Officers had RS of inspection violation
 - Defendant's conduct at bus stop and gas station provided RS



State v. Baskins, p. 3

- Court of appeals
 - Superior court has authority to consider MAR based on ineffective assistance of counsel – even if that implicates prior orders at trial level
 - Appellate counsel did not make reasonable professional judgment when counsel failed to challenge trial court's findings of fact on inspection status
 - Defendant can show that error was prejudicial because there was a reasonable probability that he would have prevailed on appeal if issue had been raised



State v. Baskins, p. 3

- Registration violation
 - Mistake of fact, not law
 - Officers' intentional failure to read sentence in which expiration date was printed renders questionable the reasonableness of any mistake that ensued
 - Had accurate understanding of the law and readily available information to prevent mistake of fact
 - Reasonable probability that court would not have found RS



State v. Baskins, p. 3

- Fact that an individual—entirely unknown to officers—is seen carrying “just some small, little luggage bags” while returning on the China Bus from a weekend trip to New York is far “too slender a reed to support the seizure in this case.”
- Reasonable probability that court would not have found RS



State v. Nicholson, p. 4



State v. McNeil, p. 3



State v. Jackson, p. 11

- Red light violation
- “White lining”
- Expired license, car not registered to D.
- Open Container
- Shaky hands and nervous behavior
- Red glassy eyes
- Moderate odor of alcohol
- Strange and inconsistent statements



State v. Jackson, p. 11

- Trial judge found RS to extend and voluntary consent, but even if not, inevitable discovery applied
- COA says officer had PC to arrest for no license and open container and therefore could have searched incident to arrest—consent wasn’t necessary

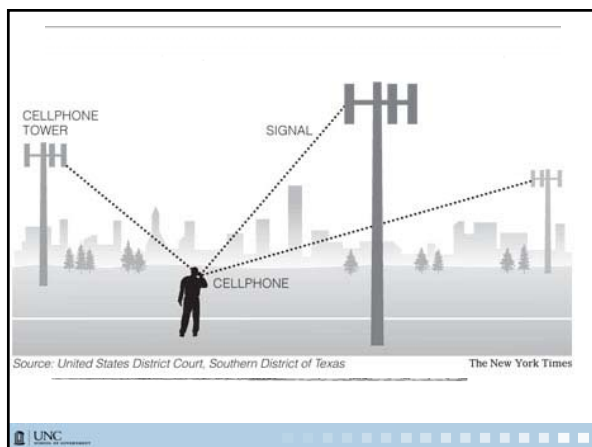


Searches



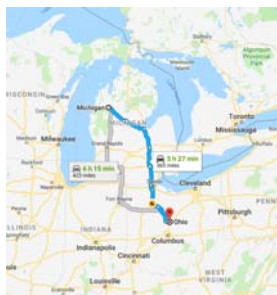
Carpenter v. US, p. 5

- Does the government need a warrant to access 7 days of historical cell site location information?
- Is obtaining that information a 4th Amendment search?



Carpenter v. US, p. 5

Carpenter was “right where the robbery was at the exact time of the robbery”



Carpenter v. US, p. 5

- Third-party doctrine is not absolute.
 - Law-enforcement access to cell site location information is such a severe threat to privacy that the third-party doctrine shouldn't be extended to cover it.
- An individual maintains a legitimate expectation of privacy in the record of his physical movements as captured through CSLI.
 - Thus, the location information obtained from Carpenter's wireless carriers was the product of a search.
- Because accessing CSLI is a search, law enforcement needs a warrant or an exception to the warrant requirement, to collect it.



State v. Smith, p. 7

- Protective Sweeps:
 - Officers can sweep incident to arrest in areas immediately adjoining place of arrest; and
 - Where specific facts and inferences support officer's belief that someone is hiding



State v. Smith, p. 7

Plain View:

- 1) Lawfully present
- 2) Lawful right of access
- 3) Contraband nature immediately apparent

Guns = Contraband for (all?) probationers



S. v. Degraphenreed, p. 8



But was search supported by PC?

- CI said defendant used car
- One of the purchases took place at trunk of car
- D asked for keys during execution of search warrant
- Dog alerted



State v. Bartlett, p. 9



Crimes



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State v. Stimpson, p. 13

- Majority upholds multiple conspiracy convictions where all the same robbers, 6 different (and unrelated) victims, 2-3 hours apart

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State v. Gentle, p. 14

- Is this a “public” place?
- Minors, money, coercion, and public places
- Public place = open to public (not necessarily visible)



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State v. Hoyle, p. 19

- G.S. 14-190.9(a1). Felony indecent exposure.
 - An adult's willful exposure of private parts (1) in a public place, (2) in the presence of a person less than sixteen years old, and (3) for the purpose of arousing or gratifying sexual desire.
- State was not required to prove that child saw defendant's genitals
- But it is necessary that child ***have been able to see had he or she looked***



In re T.T.E., p. 14



Disorderly Conduct

- G.S. 14-288.4(a)(1). Disorderly conduct by fighting.
 - Intentionally
 - Cause a public disturbance
 - By
 - Fighting
 - Other violent conduct
 - Conduct creating an imminent threat of fighting or other violence



Resist, Delay, Obstruct

- G.S. 14-223. Resisting, Delaying, or Obstructing an Officer
 - Willfully and unlawfully
 - Resist, delay, or obstruct
 - A public officer
 - Knowing or having reasonable grounds to believe the victim is a public officer and
 - While the officer is discharging or attempting to discharge a duty of his or her office



State v. Rogers, p. 15

- Expanded maintaining a dwelling, and overrules *Mitchell*, required possession over time
- Q. is whether car is used to store drugs, not how long
- Still must be **STORING** drugs there, not merely drugs present in car. "USE not contents"



Crim Pro



Currier v. Virginia, p. 37

When a defendant agrees to two trials instead of one, can he claim double jeopardy bars the second?



State v. Jones, p. 23

WHAT YOU ARE CHARGED WITH

The officer named below has probable cause to believe that on or about SUNDAY, 04 day of JANUARY, 2015, at 10:16PM in the county named above you did unlawfully and willfully OPERATE A MOTOR VEHICLE ON A STREET OR HIGHWAY AT A SPEED OF 62 MPH IN A 45 MPH ZONE. (G.S. 20-141(d)(1))

and on or about Sunday, the 04 day of January, 2015, at 10:16PM in the county named above you did unlawfully and willfully WITH AN OPEN CONTAINER OF ALCOHOLIC BEVERAGE AFTER DRINKING. (G.S. 20-138.7(A))

"[o]n . . . Sunday, the 04 day of January, 2015, at 10:16PM in the county named above [defendant] did unlawfully and willfully WITH AN OPEN CONTAINER OF ALCOHOLIC BEVERAGE AFTER DRINKING (G.S. 20-138.7(A)) [.]



State v. Jones, p. 23

- A citation must merely identify the crime charged
- Does not have to assert facts supporting each element



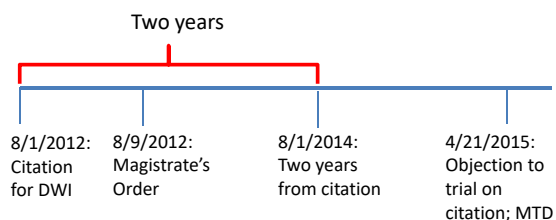


G.S. 15-1 (2015)

[A]ll misdemeanors except malicious misdemeanors, shall be presented or found by the grand jury within two years after the commission of the same, and not afterwards



State v. Curtis



State v. Curtis

- Any criminal pleading that establishes jurisdiction in the district court tolls the two-year statute of limitations in G.S. 15-1



S.L. 2017-212. Technical corrections act.

"§ 15-1. Statute of limitations for misdemeanors.

The crimes of deceit and malicious mischief, and the crime of petit larceny where the value of the property does not exceed five dollars (\$5.00), and all misdemeanors except malicious misdemeanors, shall be ~~presented or found by the grand jury~~ charged within two years after the commission of the same, and not afterwards: Provided, that if any ~~indictment found within that time~~ pleading shall be defective, so that no judgment can be given thereon, another prosecution may be instituted for the same offense, within one year after the first shall have been abandoned by the State."

"all misdemeanors . . . shall be charged within two years after the commission"



Confrontation Clause

- State v. Perez, p. 27 – stipulation to lab result waives confrontation clause objection
- State v. Guy, p. 28 – victim's statements about fleeing armed suspects were non-testimonial and properly admitted

Drug ID

- Ward—chemical analysis generally required for anything beyond MJ
- Nabors—D’s evidence of identity of controlled substance was sufficient
- Bridges—D’s out of court admission is sufficient, at least where no objection



State v. Osborne, p. 16

- Admission to ‘use’ of heroin was insufficient—admitting *use* is different than admitting identity of substance

“[W]e . . . recognize that this issue is unsettled and may merit further review in our Supreme Court.”





State v. Edwards, p. 28

Trial court erred by preventing the defendant from cross-examining the State's witnesses concerning the defendant's admission and his attempt to help investigators rescue the victim during his post-arrest interrogation



State v. Bowman, p. 29

DEFENSE COUNSEL: What, if anything, do you hope to gain out of testifying here for the State with regard to those five pending charges?

MALACHI: Justice for Anthony Johnson.

DEFENSE COUNSEL: So you don't think you're going to get anything out of it for the charges you got?

PROSECUTOR: Objection.

THE COURT: Sustained.

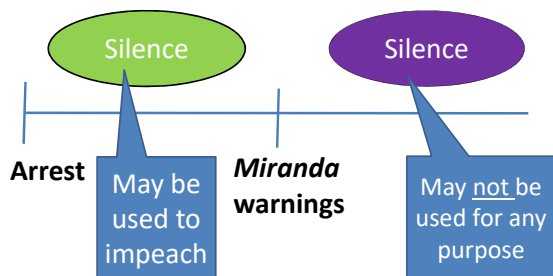
DEFENSE COUNSEL: Are you aware of any other considerations you might have for those pending charges right now?

PROSECUTOR: Objection.

THE COURT: Sustained.



State v. Perry, p. 30



Self-Defense

- State v. Ayers, p. 36
 - D. entitled to self-defense instruction where he intended to strike the blow but did not specifically intend to kill
 - No duty to retreat on where lawfully present on public road



State v. Kuhns, p. 40



- Curtilage of home is considered a part of the home by statute
- Trespass onto curtilage was “unlawful entry” under the statute



State v. Bass, p. 35

- Similar result in curtilage of apartment complex
- Victim’s character not essential to self-defense; specific instances of violence by victim properly excluded



State v. Mercer, p. 36

- Assault and firearm by felon prosecution
- Court instructed on self-defense as to assaults but refused to instruct on justification defense for the gun charge
- COA approves justification as defense for the first time



Justification Defense

1. Unlawful, imminent threat of death or serious bodily injury
2. D. did not recklessly or negligently place self in situation
3. No reasonable legal alternative
4. Direct causal connect. b/w criminal act and avoidance of threatened harm



Sentencing



State v. Murphy, p. 45

- Defendant allegedly broke into 10 residences
- Pled guilty to 7 counts; 3 counts dismissed
- Restitution (\$23,000) ordered to all victims, including victims of dismissed charges



State v. Murphy, p. 45

- G.S. 15A-1340.34: "When sentencing a defendant *convicted* of a criminal offense, the court shall determine whether the defendant shall be ordered to make restitution to any victim of the offense in question."
- Court of Appeals: The parties "cannot by stipulation increase the statutory powers of a sentencing judge to authorize restitution beyond that allowed under our General Statutes."



Miller v. Alabama (2012)

- *Mandatory* life imprisonment without parole for a homicide committed by a defendant under 18 is cruel and unusual punishment
 - NC sentencing law for first-degree murder therefore unconstitutional for defendants under 18



State v. Williams, p. 51

- 2008: Defendant, age 17, convicted of two counts of first-degree murder (P&D); consecutive LWOP
- 2016: MAR for resentencing in light of *Miller*
 - Trial judge found “no certain prognosis of Defendant’s possibility of rehabilitation”
 - Sentence: Consecutive LWOP



State v. Williams, p. 51

- Court of Appeals: “No certain prognosis” about defendant’s potential for rehabilitation means we can’t say now that he is “irreparably corrupt”

“[W]e hold that whether a defendant qualifies as an individual within the class of offenders who are irreparably corrupt is a threshold determination that is necessary before [LWOP] may be imposed by the trial court.



We’re in the bonus!



State v. Krider, p. 53

- Absconding from probation
- Defendant, a felony probationer, had his probation revoked for absconding
- Court of Appeals vacated the revocation
- Supreme Court affirmed (per curiam)



State v. Krider, p. 53

- Evidence was insufficient to reasonably satisfy the trial judge that the probationer absconded
 - Unidentified witnesses
 - Lack of repeat visits by probation officer
 - No evidence that probationer knew his officer was looking for him
 - State didn't counter probationer's testimony that he attempted to contact his officer



Grady v. North Carolina (2015)

- Albeit civil, North Carolina's SBM regime is a search under the Fourth Amendment
 - Remand to determine *reasonableness*
 - Reasonableness "depends on the totality of the circumstances, including the nature and purpose of the search and the extent to which the search intrudes upon reasonable privacy expectations."



Post-Grady SBM Cases, p. 56

- State v. White: Lifetime SBM vacated
 - No SBM hearing at all
- State v. Griffin: 30-year SBM vacated [stayed]
 - State failed to present “empirical or statistical reports”
- State v. Gordon: Lifetime SBM vacated [stayed]
 - State cannot establish now the reasonableness of a search that will begin in 2032
- State v. Gentle: Defendant’s cert. petition denied
 - Defendant failed to object at trial



