

Criminal Law Case & Legislative Update



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5. Move over law: S.L. 2012-14 (H 345)

- Effective October 1, 2012
- Expands definition of *public service vehicle*



21. Continuous Alcohol Monitoring:
S.L. 2012-146 (H 494), as amended by S.L. 2012-194 (S 847)



21. Continuous Alcohol Monitoring

- Pretrial release
- Abstinence from alcohol + CAM may be condition of pretrial release for any criminal offense
- Violation must be reported to DA



21. Continuous Alcohol Monitoring

- Probation:
 - Abstinence from alcohol + CAM may be ordered when
 - alcohol dependency or chronic abuse has been identified by a substance abuse assessment
 - Fees paid directly to provider
 - Provider may not terminate CAM for nonpayment of fees without court authorization
 - Sentencing for DWLR: If license was originally revoked for impaired driving revocation, court may order abstinence + CAM for minimum period of 90 days as condition of probation

21. Continuous Alcohol Monitoring

- Impaired Driving:
 - New G.S. 20-179(k2): Abstinence from alcohol + CAM may be ordered "as a condition of special probation" for any level of offense under G.S. 20-179
 - New G.S. 20-179(k3): Court may authorize a probation officer to require D to submit to CAM if
 - D is required as a condition of probation to abstain from alcohol and
 - Probation officer believes defendant is consuming alcohol

Level	Factors	Minimum Sentence	Max Sentence	If Suspended, Special Probation Requiring:	Max Fine
A1	3 GAFs	12 months	36 months	Imprisonment of at least 120 days + 120 days CAM	\$10,000
1	2 GAFs or 1 minor/ disabled GAF	30 days	24 months	Imprisonment of at least 30 days, or imprisonment of at least 10 days + at least 120 days CAM	\$4,000
2	1 GAF	7 days	12 months	Imprison. of at least 7 days, or at least 90 consec. days CAM	\$2,000
3	Agg. > Mitig.	72 hours	6 months	Imprison. of at least 72 hrs And/or at least 72 hrs CS	\$1,000
4	Agg= Mitig.	48 hours	120 days	48 hrs imprisonment And/or 48 hrs CS	\$500
5	Mitig. > Agg.	24 hours	60 days	24 hrs imprisonment And/or 24 hrs CS	\$200

21. Continuous Alcohol Monitoring

- G.S. 20-179(k4): Judge may not impose CAM if he/she finds good cause for not requiring D to pay unless local government entity agrees to pay

23. Cyberbullying of school employee by student: S.L. 2012-149 (S 707)

- Effective for offenses committed on or after December 1, 2012
- Class 2 misdemeanor
- Procedure for discharge and dismissal upon completion of probation
- Required transfer of student



23. Charging Procedures for Magistrates: S.L. 2012-149 (S 707)

- Offenses allegedly committed by school employees while discharging their duties of employment
- Magistrate may not issue an arrest warrant or criminal process without prior written approval of DA or designee
 - Does not apply to traffic offenses
 - Does not apply to offenses that occur in presence of LEO



41. Citizen-initiated charges: S.L. 2012-194 (S 847)

- G.S. 7A-38.5 amendment (effective for offenses on or after 12/1/12)
- Chief district court judge and DA must refer any citizen-initiated misdemeanor charge to local mediation center
- Exceptions
 - No center available
 - Case involves domestic violence
 - Judge or DA determine that mediation is not appropriate

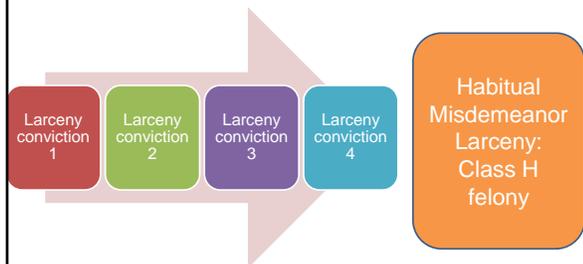


24. False Liens: S.L. 2012-150 (H 203)

- Effective for offenses committed on or after 12/1/12
- New G.S. 14-118.16
 - Filing a false lien or encumbrance a Class I felony
 - Register of deeds may refuse to file lien on reasonable suspicion that it is false
- Several related misdemeanor offenses reclassified as felonies



**26. Habitual misdemeanor larceny:
S.L. 2012-154 (H 54)**



29. Trespass: S.L. 2012-168 (S 141)

Police: Man found dead; possibly stealing copper

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By DANIELLE BATTAGLUS | WISL
Published August 29, 2012

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WENTWORTH, N.C. -- An Eden man is dead from a possible electrocution -- and police believe he lost his life trying to steal copper.

The incident happened early Wednesday morning on the Virginia/North Carolina state line. Rockingham County Sheriff Sam Page said deputies were dispatched at about 3 a.m. to investigate a 911 call at Virginia Solite Plant located at 11651 N.C. 770 in Eden.

Page said after deputies were unable to locate the victim, they called the Pittsylvania County Sheriff's Office to investigate the Virginia side of the property. Rockingham County Sheriff's Office Spokesman Kevin Suthard said the state line runs across the property.

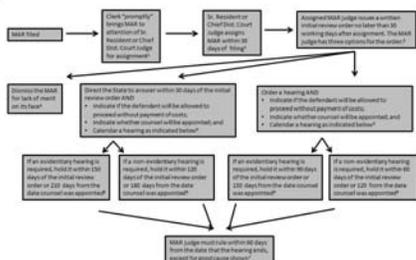
The Pittsylvania County Sheriff's Office located Brandon Creahey, 23, of 160 Piedmont St., in Eden. He was found dead near a power substation.

29. Trespass: S.L. 2012-168 (S 141)

- New Class A1 misdemeanor under G.S. 14-159.12(c)
 - First-degree trespass
 - On premises of a utility facility
 - By entering a building or
 - Surmounting a fence
- Class H felony
 - Violation of G.S. 14-159.12(c)
 - With intent to disrupt normal operation of electrical facility, or
 - Offense involves act that places offender or others on premises at risk of serious bodily injury

**29. Motions for Appropriate Relief:
S.L. 2012-168 (S 141)**

Non-Capital Motions for Appropriate Relief (MARs) – Case Processing
S.L. 2012-168, amended new deadlines for processing non-capital MARs. This flowchart summarizes the new rules.



**29. CVRs for Provisional Licensees:
S.L. 2012-168 (S 141)**

- Amendments to G.S. 20-13.3 (effective for offenses committed 10/1/12)
- Arrest requirement eliminated
- If no initial appearance, clerk may issue CVR
- Revocation effective 4th day after mailing
- Licensee may request hearing to contest validity of revocation



29. Forensic accreditation & certification: S.L. 2012-168 (S 141)



- Local forensic labs must be accredited by July 1, 2013 (was, October 1, 2012)
- Scientists at State Crime Lab must be certified
 - Within 18 months of date scientist is eligible
 - By January 1, 2013 (was, June 1, 2012)
 - Or as soon as practicable after that date

42. Ginseng, galax, and venus flytrap: S.L. 2012-200 (S 229)

3 poachers arrested for uprooting rare N.C. Venus flytraps

Updated 10/23/2012 2:48 PM
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RALEIGH, N.C. (AP) — The Venus flytrap's precarious survival in the wild along the coast of the Carolinas faces an added threat from poachers looking to cash in by uprooting and selling them.



Three people were arrested this week and charged with uprooting an endangered species without permission, a misdemeanor. North Carolina wildlife enforcement officer Matt Criscoe says they took about 200 of the bug-eating plants, which they expected to sell for about 10 cents apiece.

"One of the females told us, 'Times are tough, we need some money,'" Criscoe said Wednesday. "That could be the case or it's just an easy way to make money."

By Logan Proctor, AP
A Venus flytrap is shown in the Green Swamp in Brunswick County, N.C., in this June 12, 2009, file photo.

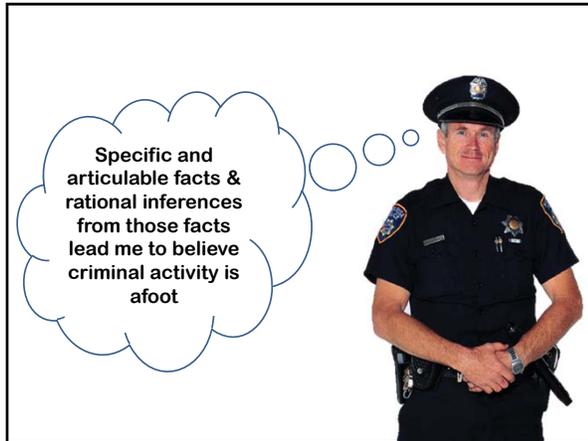
Those prices are well below the 25 cents per plant poachers have pocketed in recent years for Venus



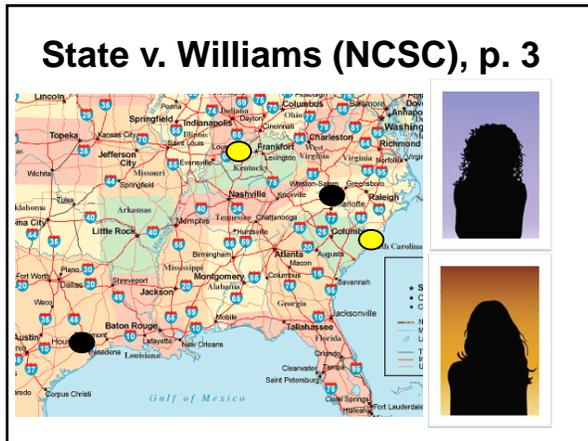
Got Reasonable Suspicion?



Specific and articulable facts & rational inferences from those facts lead me to believe criminal activity is afoot



State v. Williams (NCSC), p. 3



State v. Sellars, p. 4



- Delay of four and a half minutes for dog sniff was de minimis
- No additional reasonable, articulable suspicion required

State v. Harwood, p. 5



- Did tip possess sufficient indicia of reliability?
 - Consider informant's veracity, reliability, basis of knowledge
 - Reliable tip should predict future actions – not just existing conditions
 - Tip must be reliable in assertion of illegality – not just tendency to identify
- If not, was tip made sufficiently reliable by independent corroboration?

State v. Smith, p. 6



- Drug dog's alert to motor vehicle does not provide PC to support warrantless search of recent passenger who is standing outside vehicle

State v. Robinson, p. 7

- State v. Smith, 342 N.C. 407 (1995)
 - Roadside search of D in which he was asked to pull down his underwear, resulting in discovery of a paper towel containing crack cocaine underneath his scrotum was reasonable.
- State v. Battle, 202 N.C. App. 202 (2010)
 - Pulling female D's pants open in roadside search while male colleague stood nearby with Taser was unreasonable
 - Roadside strip search must be supported by PC and exigent circumstances
- State v. Fowler, N.C. App. (2012)
 - Roadside strip search at secluded spot was supported by PC and exigent circumstances and was reasonable

State v. Robinson, p. 7

- PC + exigency analysis only applies if investigating officers lack a specific basis for believing that a weapon or contraband is present beneath defendant's underclothing
- Does not apply in *Robinson*
 - Drug-related evidence in vehicle
 - D made furtive movement toward pants
 - Detective felt hard object between D's buttocks
- Search reasonable as detective took reasonable steps to protect D's privacy

State v. Frederick, p. 12

... you can go to prison for a long, long time.

... if you're convicted of these offenses, the law requires you get a mandatory active prison sentence[.]

- Not adequate to inform D of range of permissible punishments as required by G.S. 15A-1242(3)

State v. Mason, p. 18

- No CC violation when officer testified to victim's statements that were conveyed to him by a translator
- Why?
- Statements were admitted for corroboration—not for TOMA
- Not hearsay so outside confrontation clause



State v. Towe, p. 20

Q And do you have an opinion, ma'am, based upon your knowledge, experience and training, and the articles that you have read in your professional capacity as to the percentage of children who report sexual abuse who exhibit no physical findings of abuse?

A I would say approximately 70 to 75 percent of the children who have been sexually abused have no abnormal findings, meaning that the exams are either completely normal or very non-specific findings, such as redness.

Q And that's the category that you would place [the victim] in; is that correct?

A Yes, correct.

State v. Sweat, p. 21

Corpus Delicti Rule

Independent proof of loss/ injury

State must show that confession is supported by substantial independent evidence tending to establish trustworthiness, including facts showing that D had opportunity to commit crime

No independent proof

Strong corroboration of essential facts and circumstances in confession is required. Corroboration of insignificant facts or those unrelated to crime will not suffice.



State v. Braswell, p. 31

- Traffic stops are not custodial interrogations subject to *Miranda*

State v. Braswell, p. 31

Sufficient evidence that defendant was under influence of impairing substance based on

- Presence of three Schedule II controlled substances in D's blood
- D's poor performance on standardized field sobriety tests



State v. Cornell, p. 34

You wanna arrest me 'cuz I'm running for City Council.

You don't gotta talk to them! They fine!

No, don't get in my face. Get away. You get away from me. I am talking to them, not talking to you.

State v. Lewis, p. 35



- Sufficient evidence of violation of G.S. 14-315.1
- Three-year-old child able to access and discharge gun within 10 seconds of finding it

State v. Mather, p. 36

- Carrying concealed gun pursuant to a permit is a defense, not an essential element of the crime of carrying a concealed gun under G.S. 14-269



State v. Askew; State v. Talbert, p. 39-40

- Defendants' inability to find housing before they were released from incarceration did not constitute willful violations of probation

