

# Criminal Law Case and Legislative Update

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Executive Case Update  
October 15, 2021

Cases covered include reported decisions from the North Carolina Appellate Courts and the U.S. Supreme Court decided between May 15, 2021 and September 14, 2021. To view a complete set of summaries for this time period, go to the [Executive Case Summary](#). To obtain summaries automatically by email, sign up for the [Executive Case Update](#).

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*Rodriguez v. United States*,  
575 U.S. 348  
(2015)

- A traffic stop may not be extended beyond the time necessary to complete the mission of the stop – unless the extension is supported by reasonable suspicion of other criminal conduct.

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State v. France, N.C. App., p. 7

State v. Johnson, N.C. App., p. 8

Duration of Stop

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MAY AN OFFICER CHASE A SUSPECT INTO THE SUSPECT'S HOUSE?

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Warrantless felony arrests in the home are not permissible absent exigent circumstances.

- Payton v. New York, 445 U.S. 573 (1980) (ruling unconstitutional New York statutes that authorized law enforcement officers to enter a private residence without a warrant and with force to make a routine felony arrest)

Hot pursuit of a fleeing felon is an exigency that permits warrantless entry into a home.

- United States v. Santana, 427 U.S. 38 (1976) (determining that law enforcement officers who had probable cause to arrest the defendant for selling heroin were authorized to enter the vestibule of the defendant's home to arrest her after she retreated from the area in front of her door as officers approached)

Warrantless arrests in the home for a civil traffic offense are not permissible.

- Welsh v. Wisconsin, 466 U.S. 740 (1984) (holding that warrantless home arrest of Welsh for driving while intoxicated, a noncriminal offense, could not be upheld simply because evidence of Welsh's blood-alcohol level might have dissipated while officers obtained a warrant)

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Lange v. California, U.S. (2021)

- Flight of a person suspected of a misdemeanor offense does not categorically justify an officer's warrantless entry into a home.

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*State v. Logan,*  
N.C. App., p. 12

Search warrant affidavit that failed to identify dates or time frame of events did not establish probable cause.



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*State v. Simpkins,* N.C. (2020)

- Serious obstruction of proceedings
  - refusing to obtain counsel after multiple opportunities to do so
  - refusing to say whether he or she wishes to proceed with counsel
  - refusing to participate in the proceedings
  - continually hiring and firing counsel and significantly delaying the proceedings
- Behaving in a manner that is so threatening or abusive towards counsel that it makes “the representation itself physically dangerous”

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*State v. Atwell,* N.C. App., p. 2

- Indicted 02/2018
- First appointed attorney fired 02/2018
- Waived right to court-appointed attorney 04/2018
- Waived right to court-appointed attorney 05/2018
- Granted continuance 06/2018
- Second appointed attorney withdrew 09/2018
- Waived right to court-appointed attorney 10/2018
- Third appointed attorney fired 06/2019
- Waived court-appointed attorney
- Forfeiture determination 09/2019



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*State v. Atwell,* N.C. App., p. 2

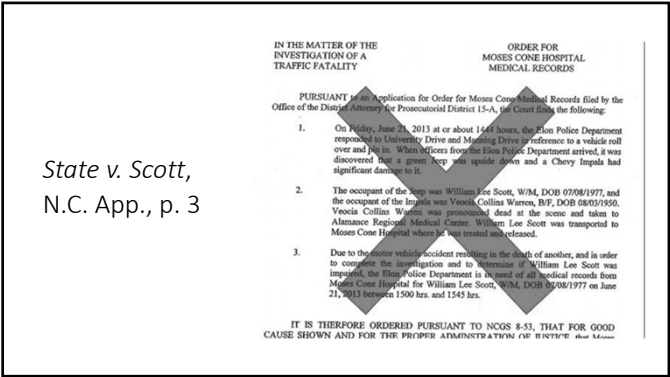


Defendant repeatedly fired appointed counsel, often within several days of their appointment.

Defendant continued to alternatively seek appointed counsel or additional time to hire an attorney while filing and withdrawing multiple waivers of the right to appointed counsel

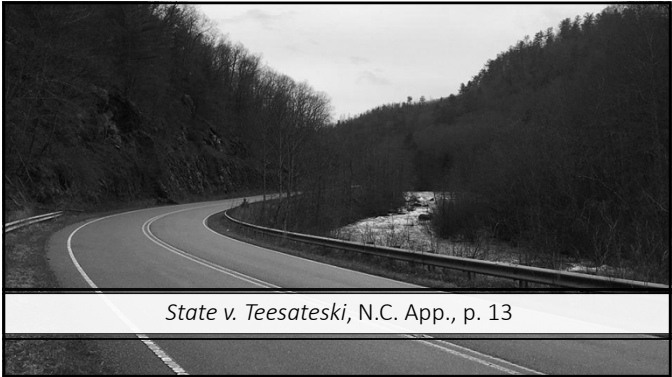
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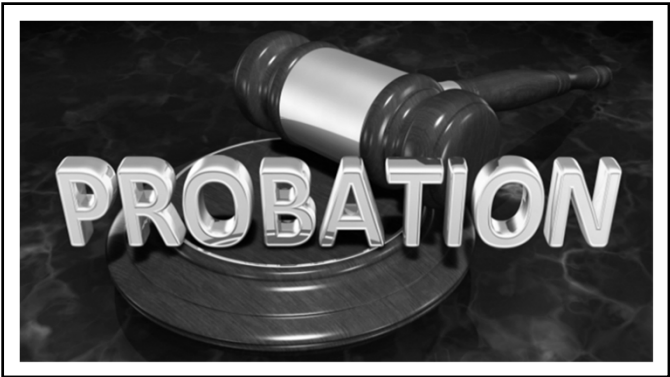
State v. Scott,  
N.C. App., p. 3

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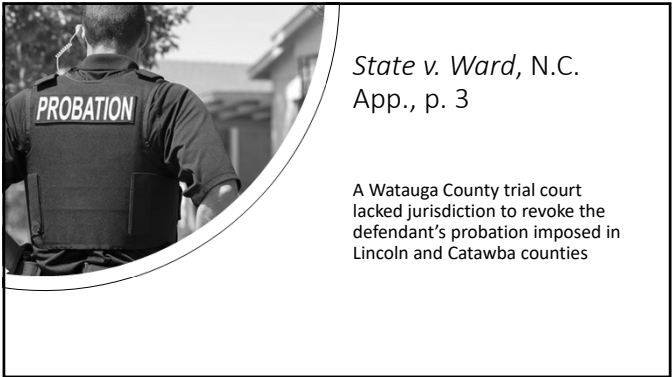


State v. Teesateski, N.C. App., p. 13

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State v. Ward, N.C.  
App., p. 3

A Watauga County trial court  
lacked jurisdiction to revoke the  
defendant's probation imposed in  
Lincoln and Catawba counties

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- Probation CANNOT be revoked for use of controlled substances
- Probation CAN be revoked for commission of a new criminal offense
- Must find good cause to not uphold defendant's statutory confrontation rights at a revocation hearing

*State v. Flanagan*,  
N.C. App.,  
p. 5

[illegible]

- *State v. Medlin*, N.C. App., p. 5

2021 Legislation Affecting Criminal Law and Procedure  
Brittany Williams  
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(last updated October 18, 2021)

Below are summaries of 2023 legislation affecting criminal law and procedure. To obtain the text of the legislation, click on the link provided below or go to the General Assembly's website, [www.ncleg.gov](http://www.ncleg.gov). Be careful to note the effective date of each piece of legislation.

4) 2.5.2012 to 30.09.2012 **SWP licensing requirements, effective for applications for licenses submitted on or after May 14, 2012 and will expire December 31, 2012.** We will amend § 2.5.2012 to require a person who is at least 18 years old but less than 21 years old to have had a limited learner's permit for at least six months in order to obtain a limited provisional license. Previously, the requirement

4) 2010-2011 Modified utility vehicles: 1) 2010-11 has defined and regulated modified utility vehicles. Effective October 1, 2011, the act redefines a modified utility vehicle as motor vehicle that:

4. It must be marked or lighted for off-road use;
5. No rear wheel;
6. No handbrake, stop levers, turn signal levers, tail levers, reflex reflectors, parking brakes, rearview mirrors, speedometer, fuel gauge, and a vehicle identification number (VIN);
7. It is at least 30 inches long, at least 16 inches wide, and at least 40 inches tall;
8. It is a motor vehicle, as defined by the state, and is not a motorcycle or moped.

The act eliminates the requirement that modified utility vehicles have an engine displacement greater than 100 cubic centimeters. The act also eliminates the requirement that modified utility vehicles be equipped with windshields and windshield wipers but provides that the owner of such an

passengers on a modified utility vehicle that is not equipped with a windshield and windshield wipers must wear a safety helmet. The act amends § 5, 20-121.1 to specify that, while modified utility vehicles generally may be operated only on roadways where the posted speed limit is 35 miles per hour or less, they may only be operated on a roadway with four or more travel lanes if the posted speed limit is 35 miles per hour or less. For further discussion, see *Issue Summary, 2011*.

4) § 1.6 (b)(1)(ii) (A) (iii) (altering, destroying, or removing personal identification marks, effective for offenses committed on or after December 1, 2011, 76 Fed. Reg. 60,134 (Oct. 10, 2011)).

alteration, deletion, or removal of permanent identification marks from persons property a (2)(c) 1. Notwithstanding if the persons property was valued at one thousand dollars (\$1,000) or less at the time of the offense or a (2)(c) 1. Notwithstanding if the persons property was valued at more than one

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S.L. 2021-138  
(§ 300), No.  
14, p. 9

First Appearance

- Defendants charged with a misdemeanor and held in custody must have a first appearance.
- All first appearances (felony and misdemeanor) for in-custody defendants must be held within 72 hours (was 96).
- If district court judge not available within 72 hours, then clerk may hold first appearance. If clerk is not available, then magistrate may hold.
- Effective December 1, 2021.

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Criminal justice reform- RDO offenses, p. 11



- Class I felony to willfully and unlawfully resist, delay, or obstruct a public officer in discharging or attempting to discharge an official duty if the resistance, delay or obstruction proximately causes an officer's serious injury
- Class F felony if it is the proximate cause of an officer's serious bodily injury

S.L. 2021-138 (§ 300)

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ENACT AGENCY POLICIES REQUIRING A DUTY TO INTERVENE AND REPORT EXCESSIVE USE OF FORCE OR OTHER ABUSE.

The Task Force recommends that all North Carolina law enforcement agencies enact a policy articulating a duty to intervene and report in any case where a law enforcement officer may be a witness to what they know to be an excessive use of force or other abuse of a suspect or arrestee.

Necessary Action: local agency policy change; state agency policy change.

NORTH CAROLINA  
TASK FORCE FOR  
RACIAL EQUITY IN  
CRIMINAL JUSTICE

REPORT 2020

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Duty to Intervene and Report

Officers have a duty to intervene when necessary to prevent or stop another officer from using a level of force that the officer knows is excessive under the existing circumstances.

Officers shall intervene when the officer observes any other officer treating anyone in any manner that is inconsistent with law or agency policy.

Any officer who is required to intervene, also has a duty to report that intervention. Notification shall be made to a supervisor, documented in writing, and submitted through the Chain of Command or an established internal affairs process.

Failure to report as required may result in disciplinary action up to and including dismissal, and possible criminal charges.



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S.L. 2021-137, No. 13, p. 9

**Duty to intervene.**

- 1. A law enforcement officer is in the line of duty;
- 2. The law enforcement officer observes another law enforcement officer use force against another person;
- 3. The observing officer reasonably believes the force used exceeds the amount of force authorized under G.S. 15A-401(d); and
- 4. The observing officer has a reasonable opportunity to intervene.

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S.L. 2021-137, 2021-138:  
*Giglio* Notifications

- New G.S. 17C-16, 17E-16
- Judge who notifies law enforcement officer that he or she may not be called to testify based on bias, interest, or lack of credibility must report that notification to Criminal Justice or Justice Officers’ Standards Division and provide copy of written document or order
- Must inform Division within 30 days of notifying officer.

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Remote  
proceedings, p. 2-  
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Grants a general authorization for judicial officials to conduct proceedings of all types using an audio and video transmission in which the parties, the presiding official, and any other participants can see and hear each other

S.L. 2021-47 (S 255)

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S.L. 2021-47 (S 255), No. 4, p. 2

**CLARIFY ORDER FOR ARREST FOR FAILURE TO APPEAR FOLLOWING RECEIPT OF CRIMINAL SUMMONS**

**SECTION 6.(a)** G.S. 15A-305(b) reads as rewritten:  
“(b) When Issued. – An order for arrest may be issued when:  
...  
(3) The defendant has failed to appear as required by a duly executed criminal summons issued pursuant to G.S. 15A-303 that charged the defendant with a criminal offense, or a citation issued by a law enforcement officer or other person authorized by statute pursuant to G.S. 15A-302 that charged the defendant with a misdemeanor.  
....”  
**SECTION 6.(b)** This section is effective when it becomes law and applies to orders for arrests issued on or after that date.

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S.L. 2021-128  
(H 692), No. 12,  
p. 9



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SECTION 1. G.S. 20-135.4 reads as rewritten:  
"§ 20-135.4. **Certain automobile safety standards.**  
(a) Definitions. – For the purposes of this section, the term "private passenger automobile" shall mean means a four-wheeled motor vehicle designed principally for carrying passengers, for use passengers on public roads and highways, except a multipurpose passenger vehicle which is constructed either on a truck chassis or with special features for occasional off-road operation highways.  
(b), (c) Repealed by Session Laws 1975, c. 856.  
(d) The manufacturer's specified height of any passenger motor vehicle shall not be elevated or lowered, either in front or back, more than six inches by modification, alteration, or change of the physical structure of said vehicle without prior written approval of the Commissioner of Motor Vehicles. On or after January 1, 1975, no self-propelled passenger vehicle that has been so altered, modified or changed Prohibited Modifications. – A private passenger automobile shall not be operated upon any highway or public vehicular area without the prior written approval of the Commissioner if, by alteration of the suspension, frame, or chassis, the height of the front fender is 4 or more inches greater than the height of the rear fender. For the purposes of this subsection, the height of the fender shall be a vertical measurement from and perpendicular to the ground, through the centerline of the wheel, and to the bottom of the fender."

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SECTION 2. G.S. 20-17 reads as rewritten:  
"§ 20-17. **Mandatory revocation of license by Division.**  
(a) The Division shall forthwith revoke the license of any driver upon receiving a record of the driver's conviction for any of the following offenses:


....

(17) A third or subsequent conviction of operating a private passenger automobile with prohibited modifications on any highway or public vehicular area under G.S. 20-135.4(d). A conviction for violating G.S. 20-135.4(d) is a third or subsequent conviction if at the time of the current infraction the person has two or more previous convictions under G.S. 20-135.4 that occurred in the 12 months immediately preceding the date of the current infraction.

...."

SECTION 3. G.S. 20-19 reads as rewritten:  
"§ 20-19. **Period of suspension or revocation; conditions of restoration.**  
....  
(c2a) When a license is revoked under G.S. 20-17(a)(17), the period of revocation shall be not less than one year.  
...."

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Theft of catalytic converters, p. 11

Makes larceny of a catalytic converter a Class I felony

S.L. 2021-154 (S 99)

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Credit card skimming devices, p. 4


Knowing possession, sale, or delivery of a skimming device punishable as a Class I felony

S.L. 2021-68 (H 238)

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Police vehicles and equipment, p. 11

- Breaking or entering vehicles owned or operated by any law enforcement agency
- Larceny of law enforcement equipment from a law enforcement vehicle
- Both Class H felonies



S.L. 2021-167 (H 761)

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