

 **UNC** | SCHOOL OF GOVERNMENT

## Current Developments in Criminal Law

- February 19, 2021
- Phil Dixon

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*STATE V. HUMPHREYS* (12.31.20 COA)

- Resist/Obstruct/Delay and Disorderly Conduct
- Random K-9 walkthrough at high school led to alert on D.'s car



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*STATE V. HUMPHREYS*

- Strong language directed at police in presence of students passing through lot
- D. observes search closely and does not back away from car when asked
- Steps out of sight for 3 seconds, comes back when asked, but not all the way to where officer wanted

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*STATE V. HUMPHREYS*

- D/O Conduct and RDO?
- Unanimous Court of Appeals:
  - No substantial interference with school operation, so insufficient evidence of D/O conduct

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*STATE V. HUMPHREYS*

- Insufficient evidence of RDO two different ways:
  - 1) D. did not act willfully
  - 2) D. merely remonstrated officers with conduct and speech; element of R/D/O not met

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*RDO AND WILLFULNESS*

- [W]illful is to be interpreted as something more than an intention to do a thing. It implies the doing [of] the act purposely and deliberately, indicating a purpose to do it without authority —careless whether [someone] has the right or not—in violation of law, and it is this which makes the criminal intent without which one cannot be brought within the meaning of a criminal statute. *State v. Whitener*, 93 N.C. 590 (1885)

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### HUMPHREYS AND WILLFULNESS

- D. watched closely to “lawfully observe” search of her car and clearly believed she had a right to do what she did
- D. stayed within sight of officer (mostly) and did not interfere with his search
- D. did not deliberately in violation of law and therefore did not act willfully for purposes of RDO statute

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### MERE REMONSTRATION RULE

[M]erely remonstrating with an officer in [*sic*] behalf of another, or criticizing or questioning an officer while he is performing his duty, when done in an orderly manner, does not amount to obstructing or delaying an officer in the performance of his duties.  
*State v. Leigh*, 278 N.C. 243, 251 (1971).

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### FREE SPEECH AND FIGHTING WORDS

- 1<sup>st</sup> Amendment protects vulgar speech and speech critical of public officials, including police
- Fighting words—those tending to cause an immediate breach of peace from the person at whom the language is directed—are not protected (*Chaplinsky v. New Hampshire*, 315 U.S. 568 (1942))

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### FREE SPEECH AND FIGHTING WORDS

- No convictions for fighting words upheld by U.S. Supreme Court since *Chaplinsky* in 1942
- Not clear what, if anything, could constitute fighting words under modern cases

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### FREE SPEECH AND FIGHTING WORDS

- Question is whether language rises to level of fighting words, not whether it was orderly. *Brooks v. N.C. Dept. of Corrections*, 984 F. Supp. 940 (E.D.N.C. 1997)
- If prosecution is based on speech, raise a 1st Amend. challenge at the motion to dismiss stage and seek jury instructions about 1st Amend. protections as appropriate

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### *State v. Kelliher and Juvenile Life Sentences*

- “De facto life” sentences are reviewable for *Miller* violations under the state and federal constitution
- Consecutive sentences may create an unconstitutional de facto life sentence
- The consecutive life with parole sentences here violated *Miller*; remand for imposition of concurrent LWP sentences

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### *JUVENILE DE FACTO LIFE SENTENCES*

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| • <u><i>St. v. Kelliher</i></u>                    | • <u><i>State v. Conner</i></u>                    |
| • Juvenile was 17 at time of crime                 | • Juvenile was 15 at time of crime                 |
| • Consecutive sentences for a minimum 50-year term | • Consecutive sentences for a minimum 45-year term |
| • Parole eligible at 67 yrs. old                   | • Parole eligible at 60 yrs. old                   |

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### *State v. McCants*

- Warrantless search of Post-Release Supervisee's residence was unconstitutional
- Close analysis of statute allows only search of D.'s person, not residence (unlike probationers)
- “Catch-all” provision authorizing DPS to adopt regulations as needed was not enough to justify search

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