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Summer 2019 Criminal Law Webinar

Stops, Searches, and Investigation

State v. Carver, p. 3

What officer knew from anonymous tip

- Car in ditch
- Truck trying to pull it out
- Possible drunk driver



Carver, p. 3

- What officer found
 - Deputy arrives 10 minutes after call
 - Muddy car angled into driveway
 - Truck driving 15-20 mph under speed limit a few miles down road
 - Only vehicle on road capable of pulling out a car
 - No signs of ropes, chains, straps, or other towing equipment

"At best all we have is a tip with no indicia of reliability, no corroboration, and conduct falling within a broad range of what can be described as normal driving behavior."

- Details of tip failed to identify vehicle or people; no indication when tipster observed accident
- Officer's observations couldn't corroborate such a vague tip, and no other reasonable suspicion existed to justify stop

State v. Carver, p. 3

Horton, p. 4

What Officer Knew

- Anonymous report about 8:40 pm
- Suspicious white male
- Gold or silver vehicle
- Walking in parking lot
- Prior break-ins and vandalism in area

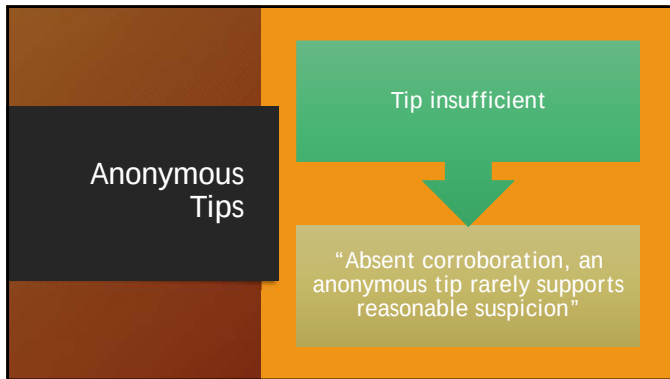
What Officer Found

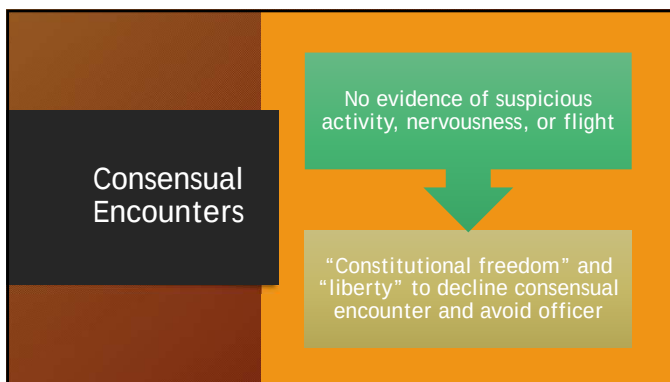
- No evidence of time officer arrived
- Black male
- Silver Nissan
- Defendant driving toward exit
- No specifics about prior crimes

What Officer Did	 Shined flashlight into car Defendant didn't lower window
	 "What's up boss man?" Defendant didn't respond
	 Followed defendant's car No bad driving, violations, or furtive movements

A Brief Appellate Interlude	What order do you appeal after the denial of a suppression motion and entry of a guilty plea?

Poll # 1	
• What order do you appeal after the denial of a suppression motion and entry of a guilty plea? 1. Denial of the suppression motion 2. Judgment of conviction	







State v. Brown, p. 5

In how many movies did Samuel L. Jackson use the word or some variation?

Poll # 2

- In how many movies did Samuel L. Jackson use the word or some variation?
 1. Only 1, Pulp Fiction, but he said it a lot
 2. 29
 3. 171

U.S. v. Lyles, p. 9

- Three packs of empty rolling papers and three stems of marijuana in single trash pull led to "sweeping" search warrant



That Probable Cause Is Garbage!

Posted on Oct. 15, 2018, 10:52 am by Jeff Welby •

Lyles, p. 9

- "What we have is a flimsy trash pull that produced scant evidence of a marginal offense but that nonetheless served to justify the indiscriminate rummaging through a household. Law enforcement can do better."
- "Reasonableness has many dimensions. One must be proportionality between the gravity of the offense and the intrusiveness of the search."



U.S. v. Abdallah, p. 13

"I'm not going to say anything at all"



Some Surprising Crimes

Maintaining a Dwelling or Vehicle

State v. Miller, p. 18

- Evidence insufficient

Opinion # 1

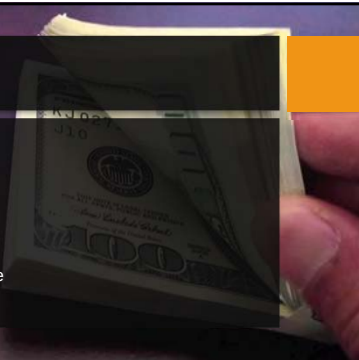
- Possession one time doesn't satisfy duration requirement

Opinion # 2

- Purpose remains determinative

State v. Melton, p. 15

- Attempted murder conviction vacated for insufficiency of overt act necessary for attempt
- Overt act must "in the ordinary and likely course of things . . . result in the commission" of the intended act



State v. Cox, p. 21

- Claim of right to property negates intent necessary for armed robbery



What are the claim of right requirements?



- Must be liquidated claim
- Cannot take more than what's owed
- Does not negate all criminal liability, just unlawful taking

Weapons on Educational Property

- *State v. Conley*, p. 18
 - Possession of "any" firearm on educational property is single offense
 - Follows *Garris* rule from felon-in-possession cases



Stalking

State v. Shackelford, p. 23

There is a woman from my church that is turning me bat crazy. She is the first thing I see when I wake up in the morning and the last thing I see before I lay down at night. . . I strongly believe that she is my soul mate, that she is my destiny. My heart aches for her.

DWI Update

Cole, p. 19

- G. S. 20-139.1 requires new advisement for "subsequent" chemical analysis
- Where first breath test failed to produce result, second breath test is not a subsequent test
- Readvisement only required for new chemical analysis in addition to or in lieu of a breath test

Hughes, p. 20

- No "constructive notice" for aggravating factors
- State must re-serve notice in superior court after de novo appeal

NC

County

JS

NOTICE OF G AGGRAV (For Offenses C

ant is hereby notified that the State of North Carolina
er G.S. 20-179(c) and (d), as indicated below.

ROSSLY AGGRAVATING FACTORS - G.S. 20-

he defendant

ior offense involving impaired driving which conviction

Shelton, p. 19

- Driver took tramadol and oxycodone as prescribed
- Brakes failed during driving
- Drugs in system but unknown amounts
- No impairment opinion from State



Shelton, p. 19

- Defendant's conduct before and after collision, along with the drugs he had taken that were still in his system, supported finding of impairment
 - Evidence of drinking or drugs with driving "oblivious to visible risk of harm" is prima facie evidence of impairment
 - Here, reasonable inference for the jury based on lack of awareness and poor judgment

Pleadings

Capps, p. 27

Find the Error

- The defendant was convicted in district court on a warrant for larceny from "Love's Truck Stop"
- The defendant didn't object to the original charging language
- On trial de novo, the prosecutor filed a statement of charges changing the name to "Love's Travel Stop & Country Stores, Incorporated"

Poll # 3

- The statement of charges was improper because
 1. The defendant had already been arraigned in district court
 2. The defendant had not objected to the earlier pleading
 3. The statement of charges changed the nature of the offense
 4. The superior court did not have jurisdiction over the revised offense

Baker, p. 24



Simultaneous indictment and presentment improper, but remedy is remand, not dismissal

Evidence

Opinion on Direct

- State's expert testified that victim exhibited characteristics consistent with sexual abuse
 - Able to describe various sexual acts at young age
 - No reason to lie

State v. Casey, p. 33, 55

Opinion on Cross

- QUESTION
As a matter of fact, you found nothing unusual about this young lady, did you?
- ANSWER
Nothing unusual . . . other than my opinion that she had been sexually abused.

State v. Casey, p. 33, 55

Opinion on Re-Cross

State v. Casey, p. 33, 55

- QUESTION
And [your statement on re-direct is] based on her comments to you and nothing else?
- ANSWER
... I would say it's nothing else. It is her statements to me ...
but you know, that's what my education is about is being able to make inferences based on individual statements to me.

Procedure

State v. Jones, p. 39

- Violation of G.S. 7A-49.4(e) is reversible error only where defendant prejudiced
- Must show "reasonable possibility of different outcome"

RUN DATE: 05/06/19 IN THE GENERAL COURT OF JUSTICE PAGE: 1
LOCATION: MURPHY, N.C. SUPERIOR COURT DIVISION COUNTY OF CHEROKEE
COURT DATE: 06/03/19 TIME: 09:30 AM COURTROOM NUMBER: 0002
SUPERIOR/CRIMINAL - TRIAL MATTERS

Chandler, p. 41

- Can a judge reject an open *Alford* plea?
- Can a prosecutor condition a plea on the defendant's admission?

State v. Copley, p. 38

- New murder trial for State's race-based closing argument
- DA argued racial motivation may have been a factor and that the jury should consider it when evaluating reasonableness of defendant's shooting
- Majority: No evidence of racial animus or motivation during trial

Copley, p. 38

- "Superfluous injection of race" prohibited where race is irrelevant to case
- But, "acknowledging race as a motive or factor may be entirely appropriate" when supported by facts of case
- Dissent: This was a reasonable inference and objections were properly overruled. Comments were "brief and not an appeal to racial animosity"

Sentencing

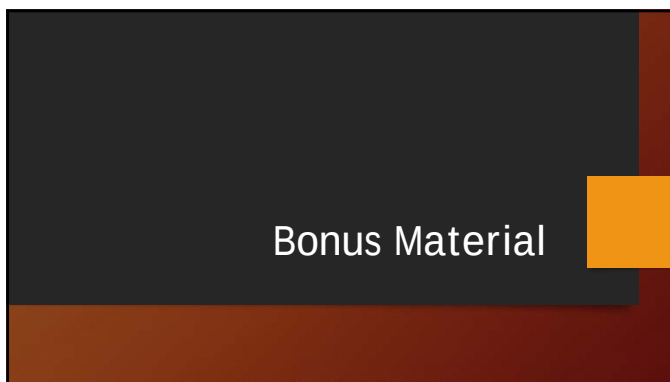
Prior Record Level

- McNeil, p. 53
 - error to treat paraphernalia conviction as class 1 misdemeanor without evidence or stipulation
- Arrington, p. 52
 - defendant's stipulation to B1 second-degree murder was valid and binding

STATE OF NORTH CAROLINA		In The General Court Of Justice ☐ District ☐ Superior Court Division	
County			
STATE VERSUS			
Name And Address Of Defendant			
Social Security No. Date Of Birth			
Race Sex Color			
WORKSHEET PRIOR RECORD LEVEL FOR FELONY SENTENCING AND PRIOR CONVICTION LEVEL FOR MISDEMEANOR SENTENCING (STRUCTURED SENTENCING) (For Offenses Committed On Or After Dec. 1, 2005)			
I. SCORING PRIOR RECORD/FELONY SENTENCING		FACTORS	POINTS
NUMBER	TYPE		
Prior Felony Class B Conviction		4	4
Prior Felony Class C Conviction		2	2

In Closing

Use It or Lose It	Move	Move to suppress before trial • <i>Rivera</i> , p. 57; <i>Loftis</i> , p. 57
	Specify	Specify variance when move to dismiss • <i>Nickens</i> , p. 57
	Object	Object to closing argument • <i>Copley</i> , p. 38
	Appeal	Appeal if client wants appeal, even if client has signed appeal waiver • <i>Garza v. Idaho</i> , p. 57



State v. Wilson, p. 8

- Defendant approached home during execution of search warrant by swat team at 11pm
- Walked past uniformed officer and tried to pass another closer to residence
- "Going to get my moped"
- NCSC affirms trial court's denial of motion to suppress



Michigan v. Summers, 452 U.S. 692 (1981)

- *Bailey v. U.S.*, 568 U.S. 186 (2013) – *Summers* rule applies to actual occupants, not merely ‘recent’ occupants
- Factors to determine if in “immediate vicinity”: legal boundary of the property; whether occupant is within line of sight of the dwelling; the ease of reentry
- Still need separate reasonable suspicion to frisk those detained
