 **SCHOOL OF GOVERNMENT**

## Summer Criminal Law Webinar

- June 4, 2021
- Phil Dixon
- Jonathan Holbrook
- Brittany Williams

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*Torres v. Madrid, p. 1-2*

- Police shoot 13 rounds at fleeing woman
- Several bullets hit her, but she did not stop and was not immediately caught
- Sues police for excessive force



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*Torres v. Madrid, p. 1-2*

- Seizure = Application of force to a suspect with intent to restrain, regardless of success
- Force from a distance = still force
- Objective determination of officer intent
- Seized only so long as force applied absent submission

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*State v. Steele, p. 3-4*

- 2:50 a.m., LEO sees D. enter parking lot
- Pulls in alongside D's car, gestures with hand for D. to stop
- No blue lights or sirens
- Not blocking D's path

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*State v. Steele, p. 3-4*

- Trial Court: Consensual encounter; no seizure, no problem
- Majority of COA: This was a seizure by show of authority
  - Stop gesture from officer in marked car at this time and place
  - Laws punish failure to follow traffic commands or resisting an officer
- Remand for RS determination

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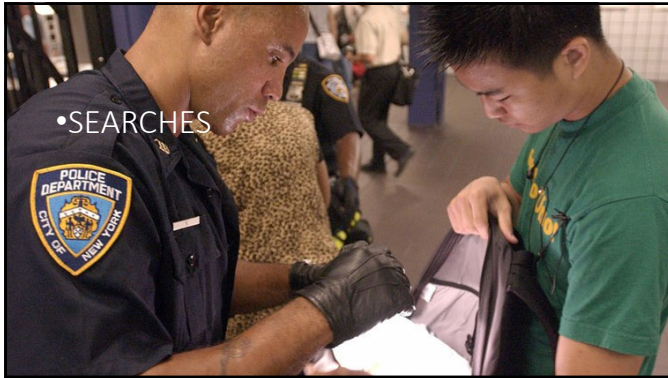
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### •SEARCHES

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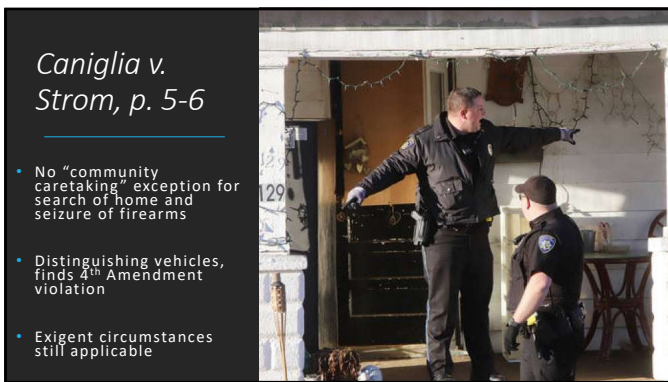
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### *Caniglia v. Strom, p. 5-6*

- No "community caretaking" exception for search of home and seizure of firearms
- Distinguishing vehicles, finds 4<sup>th</sup> Amendment violation
- Exigent circumstances still applicable

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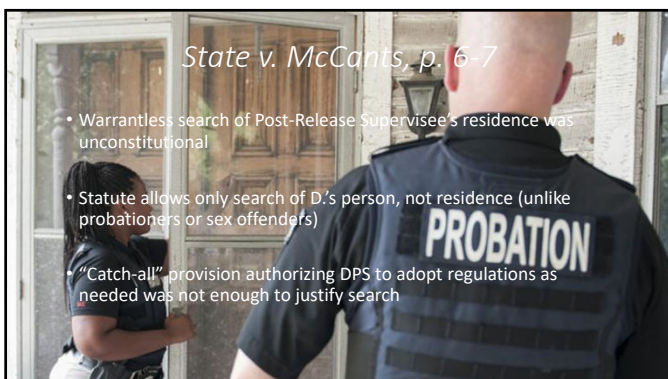
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### *State v. McCants, p. 6-7*

- Warrantless search of Post-Release Supervisee's residence was unconstitutional
- Statute allows only search of D's person, not residence (unlike probationers or sex offenders)
- "Catch-all" provision authorizing DPS to adopt regulations as needed was not enough to justify search

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*State v. Crump, p. 14-15*



- Reversible error to deny defense the ability to question potential jurors on issues of police shootings, racial justice, and bias
- Did not review self-defense/felony disqualification issue

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*State v. Grays, p. 17-18*

- Missing evidence discovered mid-trial
- Over D. objection, TC orders mistrial
- Double Jeopardy Violation

"[W]hen the State undertook to try Defendant without ascertaining whether it had found or tested all the evidence in its possession, the State took a chance."

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## Mistrials and Double Jeopardy

- *State v. Schalow I* – same for pleading defect that charged lesser included offense (2016)
- *State v. Resendiz-Merlos* – same for missing witness mid-trial (2019)
- Object or DJ issue is waived on appeal

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## *State v. Chandler*, p. 16

Guilty plea to Indecent Liberties in lieu

"Nothing in [G.S.] 15A-1022 or our case law announces a statutory or constitutional requirement that a defendant admit factual guilt in order to enter a guilty plea."

D. indicated factual innocence during colloquy

Plea rejected based on TC's practice of not accepting a plea when D. asserts innocence; D. convicted at trial on original charges

Reversible error; remand for reinstatement of original plea bargain

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## Speedy Trial

*State v. Spinks*, p. 15  
(7-year delay, no violation)

*State v. Forbush*  
(5-year delay, no violation)

*State v. Forbush*  
(8-year delay, violation)

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## Crimes

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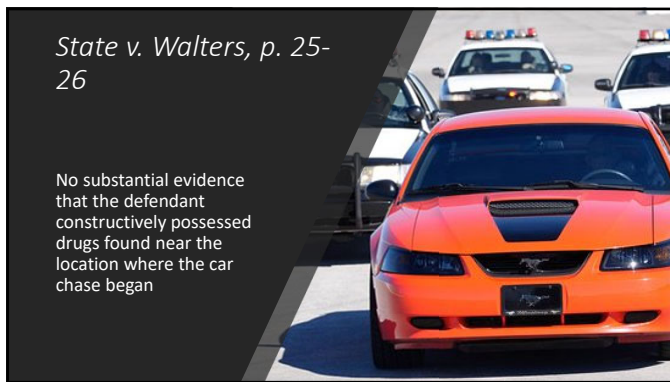
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## *State v. Walters*, p. 25-26

No substantial evidence that the defendant constructively possessed drugs found near the location where the car chase began

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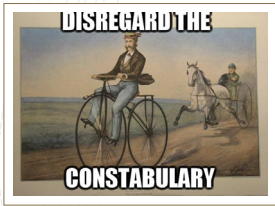
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### *State v. Humphreys*, p. 21-22



- Insufficient evidence of Resist, Obstruct Delay and Disorderly Conduct
- D. merely remonstrated officers and did not willfully R/D/O
- D. did not cause substantial disruption of for D/O Conduct @ School

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### Mere Remonstrance Rule

[M]erely remonstrating with an officer on 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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### 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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### STATE V. GLOVER, P. 23-25

- Acting in Concert instruction unsupported by the evidence
- Usually not applicable to possession offenses
- Acting in Concert = pursuant to common plan or purpose; mere presence not enough
- Jury could have confused theory with constructive possession; new trial

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*STATE V. PARKER, P. 26-28*

- Odor plus admission to marijuana use and partially smoked joint was PC to search car
- COA acknowledges smell alone might not be enough given hemp laws, but finds PC on the facts



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*M.E. v. T.J.,  
p. 28-30*

Same sex couples  
qualify for 50B  
domestic  
violence  
protective orders

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Evidence

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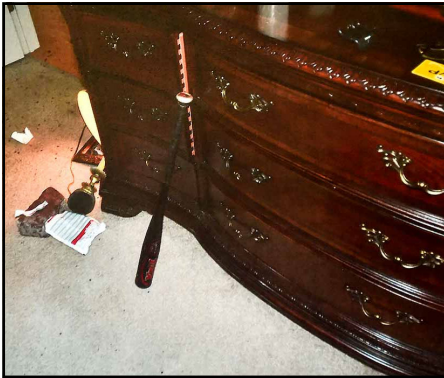
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*State v. Corbett & Martens, p. 32-34*

- Hearsay statements improperly excluded (medical diagnosis or treatment, excited utterance, and residual exception); new trial

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- Probation is a permissible punishment for criminal contempt
- Special conditions automatically preserved for review for relation to offense of conviction
- Potential First Amendment issues on compelled speech and censorship of third-party speech on social media

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State v. Blake,  
p. 37-38

- Order purporting to procedurally bar D. from filing future motions upon denial of 1<sup>st</sup> MAR was improper and invalid

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#### JUVENILE DE FACTO LIFE SENTENCES

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|--|--|
| • <u>State v. Conner, p. 35</u>                    | • <u>St. v. Kelliher</u>                           |
| • Juvenile was 15 at time of crime                 | • Juvenile was 17 at time of crime                 |
| • Consecutive sentences for a minimum 45-year term | • Consecutive sentences for a minimum 50-year term |
| • Parole eligible at 60 yrs. old                   | • Parole eligible at 67 yrs. old                   |

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BONUS!!!



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*State v. Falls, p. 4-5*

- Nighttime “knock and talk” based on tip for drugs and guns
- Unusual approach to home, in dark clothes, past no trespassing signs
- Odor of MJ and presence of gun in car led to search warrant of home

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*Falls, p. 4-5*

- Knock and Talk limited to acts that reasonably respectful citizen would take
- a/k/a The Girl Scout Rule
- This “knock and talk” was unreasonable; all evidence suppressed



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*State v. Womble, p. 9-13*

- No ineffective assistance for failure to expunge DNA results following exoneration
- DNA sample obtained by DPS for exonerated conviction was lawfully obtained and stored without expunction order; no 4th Amendment violation
- Lack of automatic expunction process does not violate due process

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File No.		<b>STATE OF NORTH CAROLINA</b>	
<b>SEARCH WARRANT</b>		In The General Court Of Justice District Superior Court Division	
IN THE MATTER OF		County	
Date Issued		Time Issued	
Name Of Applicant		I, the undersigned, find that there is probable cause to believe that the property and person described in the application on the reverse side and related to the commission of a crime is located as described in the application.	
Name Of Additional Affiant		You are commanded to search the premises, vehicle, person and other place or item described in the application for the property and person in question. If the property and/or person are found, make the seizure and keep the property subject to Court Order and process the person according to law.	
Name Of Additional Affiant		You are directed to execute this Search Warrant within forty-eight (48) hours from the time indicated on this Warrant and make due return to the Clerk of the Issuing Court.	
<b>RETURN OF SERVICE</b>		This Search Warrant is issued upon information furnished under oath or affirmation by the person(s) shown.	
I certify that this Search Warrant was received and executed as follows:			
Date Received	Time Received	Date Executed	Time Executed
<input type="checkbox"/> I made a search of		Date	
		Name (type or print)	
		Signature	

*State v. Moore, p. 7-8*

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*Moore, p. 7-8*

Affidavit stated controlled buys were observed at D.'s house when the buys actually occurred elsewhere

False statements confused the trial court itself in its rulings

Without false statements about location of buys, no PC to search D.'s home

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*State v. Tripp, p. 8-9*

Search warrant for D.'s home, but not D.'s person

No arrest warrant for D. either

D. standing next door to his house while police searched did not render him an occupant; illegal search

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*State v. Meader, p. 20*

- Felony B/E of MV, larceny, etc., stemming from bizarre behavior of D. at treatment center
- No error to deny instruction where D. retained capacity to walk, talk, and think
- "At best," evidence showed mere intoxication; not enough



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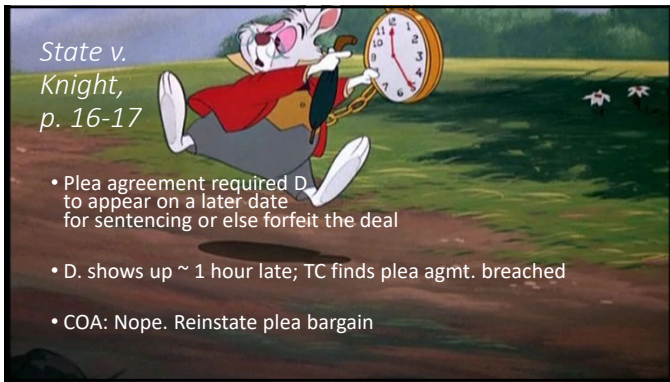
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*State v. Knight, p. 16-17*

- Plea agreement required D. to appear on a later date for sentencing or else forfeit the deal
- D. shows up ~ 1 hour late; TC finds plea agmt. breached
- COA: Nope. Reinstate plea bargain



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