

Criminal Law
Case Update
(Part I)
Shea Denning
UNC School of Government
June 18, 2013

Topics

- Blockbusters
- Stops and frisks
- Warrantless searches
- Criminal procedure and DWI
- Other crimes

State v. McKenzie (p. 26)

NCSC granted writ of supersedeas to stay enforcement



Missouri v. McNeely (p. 6)



Warrantless Searches

- 4th Amendment generally requires that search be based on probable cause and carried out pursuant to warrant
- Exceptions to PC and/or warrant requirement
 - Search incident to arrest (both)
 - Consent (both)
 - Special governmental needs (both)
 - Exigent circumstances (warrant exception)

Compelled blood testing in DWI cases

- *Schmerber v. California*, 384 U.S. 757 (1966)
 - Warrantless blood draw permissible
 - Officer might reasonably believed this was emergency and that delay threatened destruction of evidence given dissipation of alcohol
- Post-*Schmerber*, courts split on whether dissipation of alcohol alone provided exigency
 - *State v. Fletcher*: 202 N.C. App. 107 (2010)
 - Dissipation plus evidence regarding delay established exigency

Missouri v. McNeely (p. 6)



- Dissipation of alcohol not a per se exigency
- If officer can obtain warrant w/o "significantly undermining" search, must do so
- Whether nonconsensual warrantless blood draw is reasonable must be determined case by case on totality of circumstances
 - May have exigency w/o accident
 - Warrant procedures relevant
 - Availability of magistrate relevant

State v. Heien (p. 3) (NCSC)



Mistakes of Fact and Law

- Reasonable mistake of fact can provide reasonable suspicion
- State v. McLamb, 186 N.C. App. 124 (2007) said reasonable mistake of law could not.
 - Officer in *McLamb* believed speed limit was 20 mph. It was 55 mph.

State v. Heien (p. 3) (NCSC)

- New Rule:
- An officer's **objectively reasonable but mistaken** belief that a traffic violation has occurred can provide reasonable suspicion for a stop

Stops and Frisks



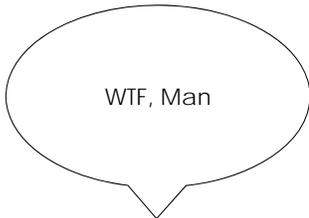
Which provides reasonable suspicion?

1. Failing to make eye contact with officer on highway and slowing down
2. Yelling WTF to an officer after a stop concludes
3. Crossing dotted white line between lanes and driving on fog line at 1 a.m.
4. 2 and 3.
5. All of the above.

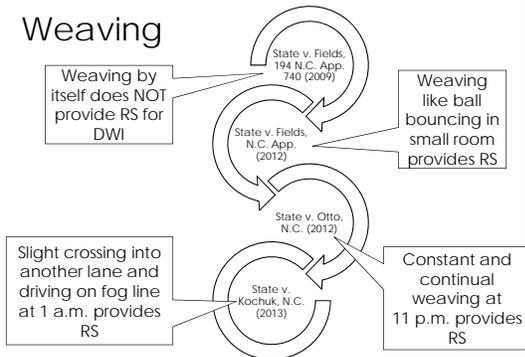
State v. Canty (p. 4)

- "Nervousness, slowing down, and not making eye contact is nothing unusual when passing law enforcement stationed on the side of the highway."
- "conduct falling within the broad range of what can be described as normal driving behavior"

In re V.C.R. (p. 4)



Weaving



How long can stop last?



Which of the following stops is reasonable in scope and duration?

A seat belt stop that lasts 10 min., during which officer asks driver and passenger whether they have weapons and runs a record check for both

1. Lawful
2. Unlawful

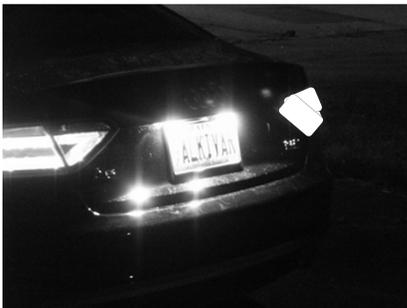
State v. Franklin (p. 4)

- Police diligence in lawful traffic stop involves
 - License and registration check
 - Computer check
 - Issuance of ticket
- And, so long as it does not prolong seizure
 - Passenger ID
 - Questions unrelated to justification for stop
 - Dog sniffs

A brake light stop that lasts 12 min., during which officers discuss light with driver, ask driver & passenger where they are going, ask both for their driver's licenses & check both for warrants.

1. Lawful
2. Unlawful

State v. Heien (p. 3) (NCSC)



A stop for impeding traffic lasting 10 min. during which officer checks for warrants and, finding none, asks the defendant (who is hyper and pacing nervously) whether he has weapons.

1. Lawful
2. Unlawful

State v. Phifer (p. 4)

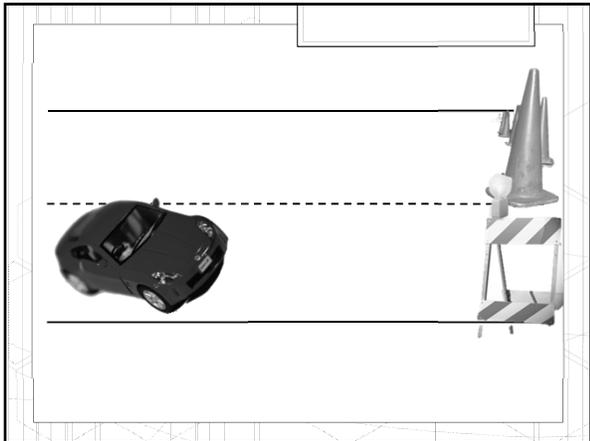


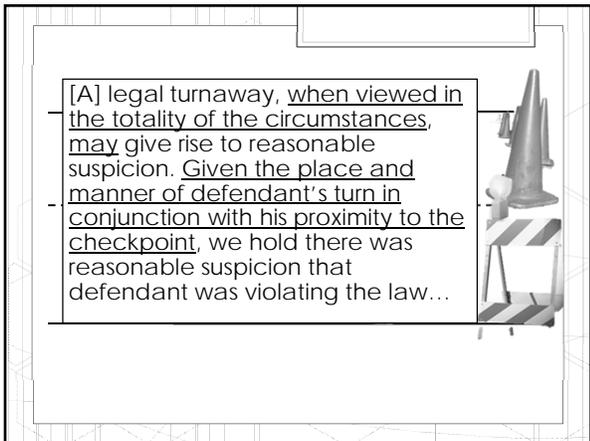
Nervous
pacing
insufficient for
frisk

© Corbis
http://clifesterholloway.files.wordpress.com/2012/06/cops_search_man_london.jpg

State v. Griffin (p. 5) (NCSC)







[A] legal turnaway, when viewed in the totality of the circumstances, may give rise to reasonable suspicion. Given the place and manner of defendant's turn in conjunction with his proximity to the checkpoint, we hold there was reasonable suspicion that defendant was violating the law...



Warrantless Searches

Maryland v. King (p. 8)



- Fourth Amendment not violated by DNA cheek swab as part of booking procedures for serious offense

FL v. Harris (p. 7); FL v. Jardines (p. 8)



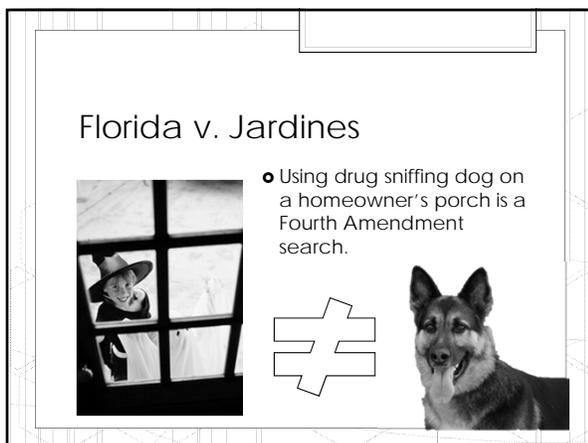
Florida v. Harris

How should a court determine if a drug dog's alert provides probable cause to search a vehicle?



Florida v. Harris

- Would the facts surrounding a dog's alert, viewed through the lens of common sense, make a reasonably prudent person think that a search would reveal contraband or evidence of a crime?
- If so, then "sniff is up to snuff."
- Training records established Aldo's reliability in detecting drugs.
- Aldo's sniff passes test.



Criminal Procedure & DWI

Motions to Dismiss: Wilson (p. 15)

The screenshot shows a news article from the Winston-Salem Journal. The headline reads: "Man's DWI conviction vacated over allegations that police used force to take blood". The article text includes: "In court papers, Robert Dean Wilson alleged that his rights were violated when a Winston-Salem police officer sat on him while he was lying on a hospital bed just after midnight on July 13, 2010, and ordered a nurse to take his blood more than an hour after he was arrested on a charge of misdemeanor driving while impaired. Last week, a Forsyth County judge agreed. Superior Court Judge Joseph Turner granted a motion to dismiss the DWI." There is a small photo of a man and a "CLICK HERE FOR OBITUARIES" link.

Motions to Dismiss

- G.S. 15A-954(a)
 - (1) Statute alleged to have been violated is unconstitutional on its face or as applied
 - (4) flagrant violation of constitutional rights causing irreparable prejudice

State v. Cathcart (p. 25)

Lot Number: AG011703 Exp Date: 04/27/2012	Lot Number: AG011703 Exp Date: 04/27/2012
Test 9/21/12 .10 11:27 p.m.	Test 9/21/12 .09 11:38 p.m.
DIAG Pass AIR BLK .00 ACCY CHK .08 AIR BLK .00 SUB TEST .10 AIR BLK .00 SUB TEST .** 11:27pm 11:29pm 11:32pm	DIAG Pass AIR BLK .00 ACCY CHK .08 AIR BLK .00 SUB TEST .09 AIR BLK .00 SUB TEST .** 11:38pm 11:39pm 11:41pm
TEST TIME OUT Signature: <i>[Signature]</i> Chemical Analyst Insuff. sample 11:32 p.m.	NO TEST Signature of Chemical Analyst Court CVR

Other Crimes

13-year-old drives mother's car, runs off road, hits utility pole. Reckless driving?

1. Yes
2. No

In re A.N.C. (p. 27)

- Insufficient evidence of reckless driving
- Insufficient evidence of unauthorized use of a motor vehicle

Other Crimes

- State v. Williams (p. 23)
- Violation of DVPO
 - Required defendant to "stay away from" victim's place of work - did not identify workplace
 - Victim worked at various salons, including occasionally one at large shopping mall
 - D charged with violating DVPO for being in mall parking lot
 - Insufficient evidence D knowingly violated DVPO

UNC
UNIVERSITY OF NORTH CAROLINA

About the School Courses and Resources Library Master of Public Administration Publications

Criminal Law Resources

- Books, Manuals, and Articles
- Criminal Law Blog
- Criminal Law Library
- Index of Criminal Law Materials
- Other Online Resources

Criminal Law Summaries

- Criminal Case Compendium
- NC Case Summaries
- US Supreme Court Case Summaries
- Legislative Summaries

Related School Websites

- District Court Judges
- Indigent Defense
- Judicial Administration
- Juvenile Law
- Judicial College
- Magistrates
- Prosecutors
- Superior Court Judges

Criminal Law in North Carolina Home Contact Us

This page is a collection of educational resources created and compiled by criminal law faculty at the School of Government to assist people who work in the North Carolina criminal courts and criminal justice system. Please feel free to contact us with questions in our areas of expertise or about any of the resources we offer.

Criminal Law Faculty Profiles

New Resources

- Guide to Relief from a Criminal Conviction
- Arrest, Search, and Seizure Electronic Tool (ASSET)
- Collateral Consequences Assessment Tool (C-CAT)®
- NC Crime: A Guidebook on the Elements of Crime (Web Version)

<http://www.sog.unc.edu/node/84>

Knapp Sanders Building
Campus Box 3330
UNC-Chapel Hill | Chapel Hill, NC 27599-3330
T: 919.966.5383 | F: 919.962.2604

Contact Us Make a Gift

Employee login
