

Criminal Case Update Part I

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- Books, Manuals, and articles
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- Criminal Law Listserv
- Index of Criminal Law Materials
- Other Online Resources

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

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

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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 **NEW**
- Arrest, Search, and Seizure Electronic Tool (ASSET)
- Collateral Consequences Assessment Tool (CC-CAT) **NEW**
- NC Crimes: A Guidebook on the Elements of Crime (Web Version)

Send by email

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

Roadmap

- Part I (Shea)
 - Stops
 - Anonymous Tips
 - Community Caretaking
 - Reasonable Suspicion
 - DWI
 - Pretrial Detention
 - Blood Testing
 - Sentencing
- Part II (John)
 - Searches
 - Right to Counsel
 - Pleadings
 - Crimes

State v. Heien (NCSC), pg. 5

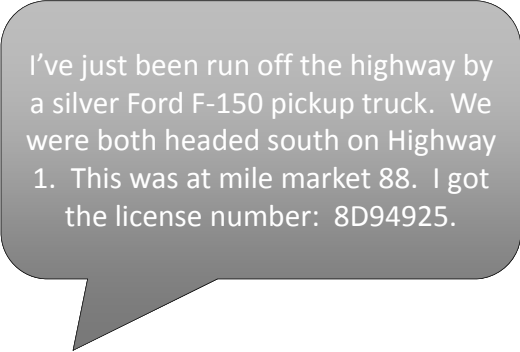
When does *Terry* stop end?

Heien v. North Carolina

QUESTION PRESENTED

Whether a police officer's mistake of law can provide the individualized suspicion that the Fourth Amendment requires to justify a traffic stop.

Navarette v. California, pg. 3



I've just been run off the highway by a silver Ford F-150 pickup truck. We were both headed south on Highway 1. This was at mile market 88. I got the license number: 8D94925.

Navarette v. California, pg. 3

QUESTION PRESENTED

Does the Fourth Amendment require an officer who receives an anonymous tip regarding a drunken or reckless driver to corroborate dangerous driving before stopping the vehicle?

Five *Navarette* Factors

- Eyewitness knowledge
- Contemporaneous report
- Use of 911 system
- Probable cause of drunk driving
- Corroboration of description, location, direction

State v. Smathers, pg. 2

Community Caretaking Doctrine

- Exception to warrant requirement
 - Previously recognized in context of searching impounded vehicles
 - Police do more than investigate crime; they help citizens in peril or otherwise in need of assistance
 - Court formally recognizes exception
 - Must balance public's interest in help from officers with individual's interest in being free from unreasonable governmental intrusion
 - Objective test

Community Caretaking Analysis

1. Did a Fourth Amendment search/seizure occur?
2. Under the totality of the circumstances, was there an objectively reasonable basis for the community caretaking function?
3. Did the public need or interest outweigh the intrusion on the individual's privacy? Consider:
 - a. The degree of public interest and exigency of situation
 - b. Attendant circumstances, including time, location, display of overt authority and force
 - c. Was vehicle involved
 - d. Alternatives

State v. Jackson, pg. 4



No Reasonable Suspicion

- 9 p.m.
- Area known for illegal drug sales
- Many drug-related arrests there
- D walks away from another man when he sees officer's car
- Does so again a few minutes later when officer reappears
- No evasive action

State v. Sutton, pg. 6

Reasonable Suspicion

- High crime area
- Suspicious movements
 - D grabbed waistband to clinch an item after looking directly at officer



DRIVING WHILE IMPAIRED

State v. White, pg. 6

Plan, But No Policy

TRAFFIC OPERATIONAL PLAN

SUPERVISOR: CPL HORNE Case Number: 2009-1563
Operation Date and Time: 09-11-09 7:55 PM

INITIAL BRIEFING

Date and Time : 09-11-09 7:30 PM Location: FOLKTON FIRE DEPT

TYPE OF OPERATION

<input checked="" type="checkbox"/> LICENSE CHECK	<input type="checkbox"/> SAFETY SEAT CHECK POINT	<input type="checkbox"/> DRUG INTERDICTION
<input type="checkbox"/> SATURATED PATROL	<input type="checkbox"/> INFORMATIONAL CHECK	<input type="checkbox"/> DWI CHECKPOINT

*REQUIRES A SHIFT SUPERVISOR OR TRAFFIC SUPERVISOR

Remarks/Comments: _____

Policy Adopted Later

ANSON COUNTY SHERIFF'S OFFICE
CHECKING STATION POLICY

GENERAL ORDER

SUBJECT: Motor Vehicle Law Checking Station

NUMBER:

DATE EFFECTIVE: 02-17-2012

RESCINDS:

APPROVED: 03-16-2012
Sheriff of Anson Co

REVIEW DATE: Annually

Page 1 of 3

A. Purpose: Checking stations are established pursuant to G.S. 20-16.3A and are established and operated for the purpose of ensuring compliance with North Carolina's motor vehicle code. All officers of this Office are required to comply with this policy when participating in a checking station established by this Office. When participating in checking stations with other law enforcement agencies, the checking station plan is in control.

B. Authorization: The checking station shall be approved by a Traffic Enforcement Unit supervisor, a shift supervisor, or higher authority. Authorization shall include the location and duration of the checking station. The authorizing official shall designate an officer to be the on-site supervisor of the checking station. The on-site supervisor shall be responsible for training all officers participating in the checking station on the



State v. White, pg. 6

“[T]he trial court did not err by concluding that a lack of a written policy in full force and effect at the time of defendant’s stop at the checkpoint constituted a substantial violation of section 20-16.3A.”

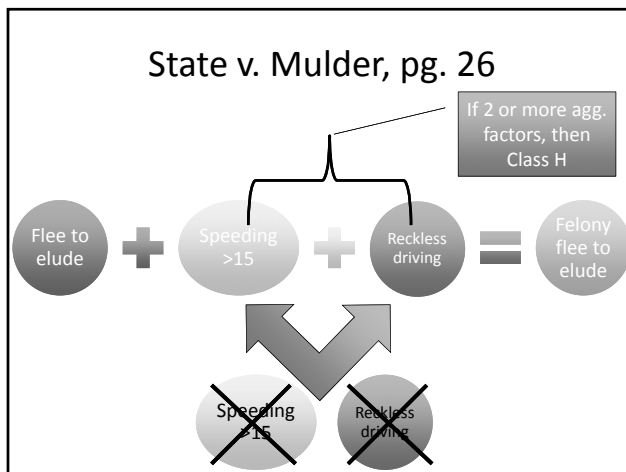
State v. Dahlquist, pg. 9

- First post-*McNeely* warrantless blood draw case
- 4 to 5 hour delay estimated based on past experience was sufficient exigency
- Dicta:
 - Arresting officers should consider video transmission option allowed by G.S. 15A-245(a)(3)
 - Better practice is to verify waiting times

State v. Geisslercrain, pg. 26

- State must provide notice of aggravating factors in superior court. G.S. 20-179(a1)(1)
- If State fails to provide notice, no aggravating factors properly may be found. *State v. Reeves*, ___ N.C. App. ___, 721 S.E.2d 317 (2012)

Where No Grossly Aggravating Factors		
Level 3	aggravating substantially outweigh mitigating	only aggravating factors
Level 4	factors balanced	no aggravating or mitigating factors
Not presumptive		
Level 5	mitigating substantially outweigh aggravating	only mitigating factors



State v. Kostick, pg. 14

- Trial court did not err in denying *Knoll* motion
- Magistrate followed G.S. 15A-511(b) in setting \$500 secured bond for defendant arrested for DWI based on A/C of 0.15
- Any deviation from statutory requirements was not prejudicial to D, who was released four hours later

State v. Whittington, pg. 15

G.S. 90-95 (g)
Subsection may be utilized only if:

- (1) State notifies D at least 15 business days before proceeding... of intention to introduce report into evidence... and provides a copy of the report to the defendant, and
- (2) D fails to file written objection... at least 5 business days before proceeding...

State v. Weaver, pg. 11

1. Motivation for seizure
2. Degree of govt. involvement
3. Legality of conduct encouraged by police