

Criminal Law Webinar Summer 2015

www.indigentdefense.unc.edu

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UNC School of Government

Criminal Law Resources

- Books, Manuals, and Articles
- Criminal Law Blog
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- Other Online Resources

Criminal Law Summaries

- Criminal Case Docketbook
- NC Case Summaries
- US Supreme Court Case Summaries
- Fourth Circuit Case Summaries
- Legislative Summaries
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Related School Websites

- District Court Judges
- Indigent Defense
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- Justice Reinvestment Act
- Juvenile Law
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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 Reentry from a Criminal Conviction
- Arrest, Search, and Seizure Electronic Tool (ASSET)
- Offenses and Consequences Assessment Tool (OCAT)
- NC Courts: A Guidebook for the Parents of "Firm" Youth (parent)

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

<http://defendermanuals.sog.unc.edu>

UNC SCHOOL OF GOVERNMENT

Indigent Defense Manual Series

WELCOME TO THE UNC SCHOOL OF GOVERNMENT'S
Indigent Defense Manual Series

The North Carolina Indigent Defense Manual Series is a collection of reference manuals addressing law and practice in areas in which indigent defendants and respondents are entitled to representation of counsel at state expense. The series was created to address the need for comprehensive reference materials for public defenders and appointed counsel, who devote their time, skill, and effort to representing poor people. In addition to assisting indigent defenders with their responsibilities, the manuals may be useful to others who work in the court system and need a reference source on the law. In keeping with the School of Government's commitment to practical scholarship, the manuals are written by authors with subject matter expertise in their respective fields, experience in developing effective educational materials, and knowledge of how things work in practice. The series is made possible by funding from the North Carolina Office of Indigent Defense Services, which is responsible for overseeing and enhancing the provision of indigent defense representation in North Carolina.

There are several ways to find what you need:

Drop down menus. A navigation bar for the manuals appears at the top of the page. To explore a manual, move your mouse to the navigation bar and a drop down menu with chapters will appear. Move your mouse to the right of a chapter name and sections appear (in manuals beginning in 2011, which have been separated into sections).

Searching. Use the "Indigent Defense Manual Search" box for a text search of the entire series. If you want to search one or more specific manuals, click on search "a specific manual."

Sections. The Section box to the right displays the sections in the chapter that you're viewing. Click on the link to jump to that section. When viewing a section, you can jump to the full chapter by following the bread crumb trail above the document.

Related content. When you are viewing a section of a manual, the Related Content box displays other chapters and sections in other manuals to which the current section refers. Click on the link to jump to that chapter or section.

The Indigent Defense Manual series is designed for online use; however, you may download or print out portions you need for personal use. Selected manuals are available for purchase in pre-assembled, tabbed notebooks from the School's online bookstore.

Thanks go to the Information Technology division of the School of Government for creating this site and to my colleagues, Jessica Smith, for developing the initial version of this handbook for our online court system.

ROADMAP

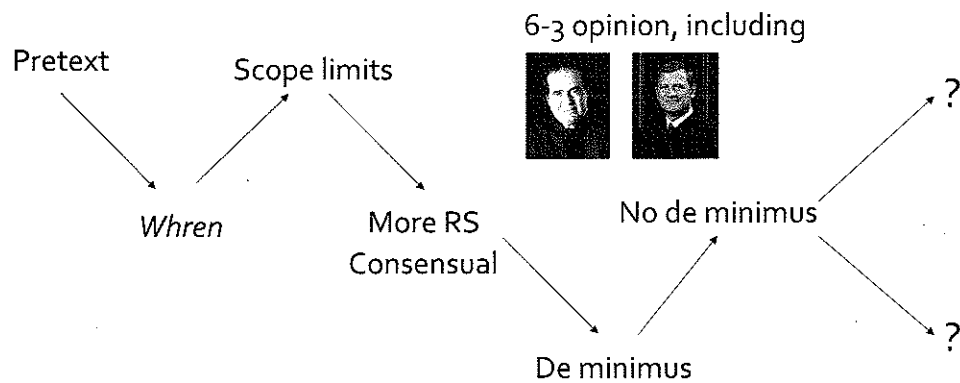
- Seizures
- Searches
- Right to Counsel
- Crimes
- Defenses
- Evidence
- Sentencing and Probation



SEIZURES



Rodriguez v. US, p. 2-3





Extending Traffic Stops



A stop may not be extended beyond the time necessary to complete the “mission” of the stop, which is to address the traffic violation that warranted the stop . . . and attend to related safety concerns. No exception for de minimus delays.

Rodriguez, p. 2

Poll

Activities related to the “mission” of an ordinary traffic stop include:

1. Check license, registration, and insurance
2. Decide whether to issue traffic ticket
3. Check for outstanding warrants against driver
4. Ping test to see if marijuana stored in tires
5. All of the above
6. 1-3 only.

Checkpoint

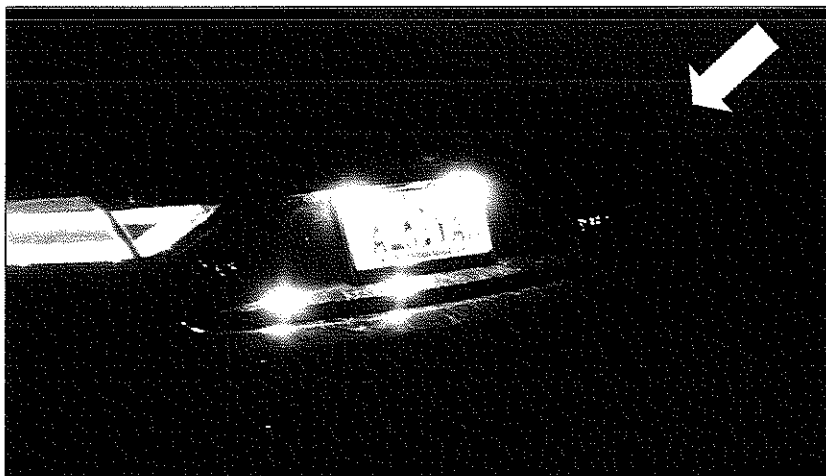


Court must determine:

- (1) Primary programmatic purpose, and
- (2) Reasonableness

McDonald, p. 3

Heien, p. 6



Mistake of Law

- Meh (at least as a legal matter)*
- Law at issue must be "so doubtful in construction" that a reasonable judge could agree with officer (Justice Kagan, concurring)
 - State v. Coleman, 743 S.E.2d 62 (N.C. App. 2013): not reasonable mistake of law
- Mistake must be objectively reasonable; subjective understanding is irrelevant

*An expression of indifference or boredom

Car Stops

- Weave plus (Wainwright, p. 3)
- "Evasive" Acts (McKnight, p. 4)
 - Must be nexus between act and police presence
- Collective Knowledge (Shaw, p. 5)



Plain View Doctrine:

- 1) Officer has right to be there
- 2) Immediately apparent evidence of crime
- 3) Officer has lawful right of access to evidence
- 4) Inadvertent discovery of evidence (??)

Plain View
Grice, p. 3

SEARCHES

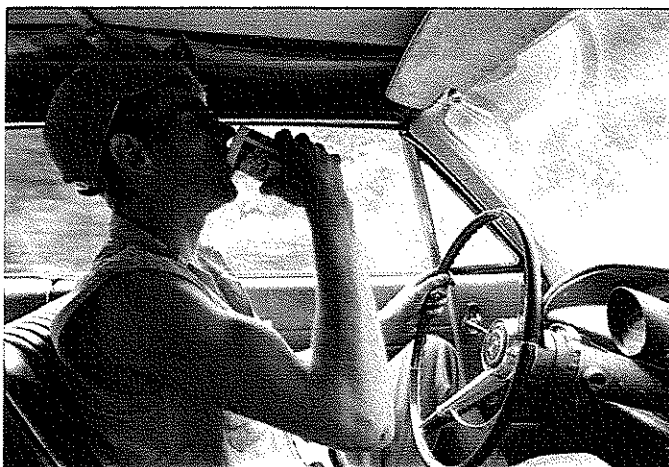


Riley v CA



Clyburn, p. 7

Vehicle Search Incident to Arrest



Fizovic, p. 7

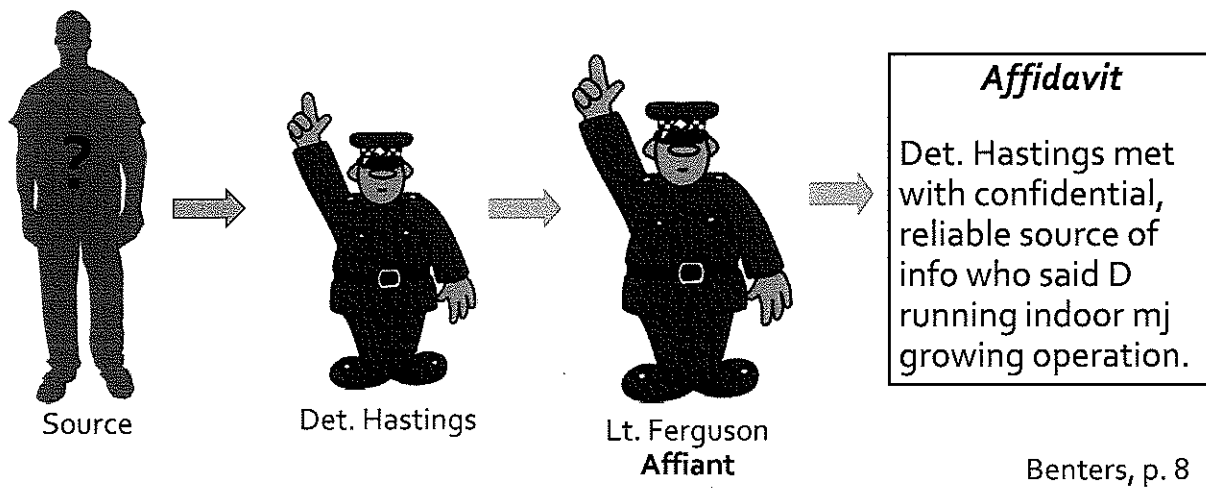
Vehicle Search

Officers may search passenger compartment incident to arrest of occupant only if:

- 1) Arrestee is unsecured and within reaching distance of passenger compartment at time of search, OR
- ★ 2) Reasonable to believe evidence relevant to open container? might be found in vehicle

AZ v. Gant, 556 US 332 (2009)

Search Warrant: Sufficiency of Affidavit



RIGHT TO COUNSEL



Counsel's Obligations to Client

- Is employment of a prosecution witness a conflict?
 - S v. Johnson, p. 15-16
- Does counsel have to ask questions on cross wanted by the client but not by counsel?
 - S v. Floyd, p. 16

Poll

Does counsel have to ask the questions?

1. No, because the client only decides major matters, such as taking stand.
2. No, because the client only decides major matters and whether to keep or strike jurors.
3. No, because the questions were frivolous.
4. Yes, because an attorney is the client's agent even on tactical matters.

CRIMES



Resist, Delay, Obstruct Assault Inflicting Physical Injury on Officer

- Failure to identify self can be RDO
- Assault officer: not limited to situation where officer carrying out lawful duty



Friend, p. 26

Possess Weapon Educational Property

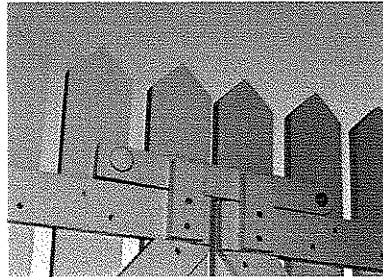
- State must prove D
 - knowingly possessed weapon, and
 - knowingly entered educational property with weapon

Exemption:
 - Concealed handgun permit
 - Handgun in closed compartment or container in locked vehicle

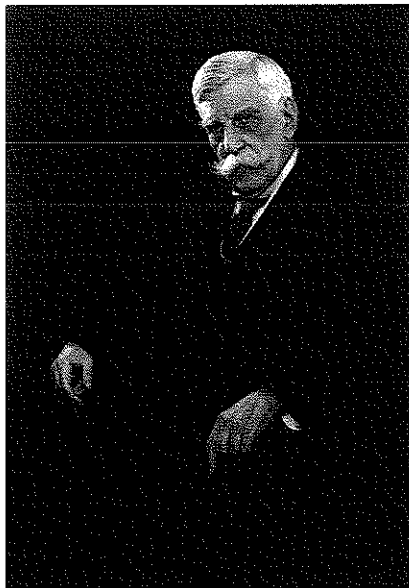


Huckelba, p. 24:

DE



ES



"Detached reflection cannot be demanded
in the presence of an uplifted knife."

"Concrete cases or illustrations stated in the
early law . . . have had a tendency to ossify into
specific rules without much regard for reason."

Brown v. United States, 256 U.S. 335 (1921)

Pick a Horse? (Hinnant, p. 13-14)

Perfect/imperfect Self-defense

- Perfect if
 - 1) **believed it necessary to kill**,
 - 2) belief was reasonable
 - 3) not aggressor, and
 - 4) force not excessive
- Imperfect
 - **No. 1)** and 2), but
 - 3) aggressor without murderous intent or 4) excessive force

Culpable Negligence/Accident

- Involuntary manslaughter if
 - 1) **killing was unintentional** and
 - 2) (a) unlawful act not ordinarily dangerous to human life or (b) culpable negligence
- Accident if
 - 1) **killing was unintentional**,
 - 2) lawful conduct, and
 - 3) no culpable negligence

S v. Stepp, p. 12-13

- Is hygiene an accepted medical purpose?
- G.S. 14-27.1 defines a "sexual act" as
 - "penetration, however slight, by any object into the genital opening of another person's body: provided, that it shall be an affirmative defense that the penetration was for accepted medical purposes"

Additional Punishment

"Unless the conduct is covered under some other provision of law providing greater punishment . . ."

- ~~14-32.4(a): assault inflicting serious bodily injury~~
- ~~14-33(c): assault on female~~
- ~~50B-4.1: habitual violation of DVPO~~
- Coakley (p. 24), Baldwin (p. 29): more serious assaults
- Jones (p. 26): habitual misdemeanor assault
- Jones (p. 26): interference with witness

North Carolina General Statutes

All Chapters Search Results

Full-Text Search?: All Chapters Return Sections

Your search for "SOME OTHER PROVISION OF LAW PROVIDING GREATER PUNISHMENT" produced 23 matches.

Section	Description	Section Text
1. G.S. 14-269.2	◆ 14-269.2. WEAPONS ON CAMPUS OR OTHER EDUCATI...	[HTML] [PDF] [RTF]
2. G.S. 106-202.19	◆ 106-202.19. UNLAWFUL ACTS; PENALTIES; ENFORC...	[HTML] [PDF] [RTF]
3. G.S. 14-151	◆ 14-151. INTERFERING WITH GAS, ELECTRIC AND S...	[HTML] [PDF] [RTF]
4. G.S. 20-141.4	◆ 20-141.4. FELONY AND MISDEMEANOR DEATH BY VE...	[HTML] [PDF] [RTF]
5. G.S. 14-33	◆ 14-33. MISDEMEANOR ASSAULTS, BATTERIES, AND ...	[HTML] [PDF] [RTF]
6. G.S. 14-34.10	◆ 14-34.10. DISCHARGE FIREARM WITHIN ENCLOSURE...	[HTML] [PDF] [RTF]
7. G.S. 66-429	◆ 66-429. VIOLATIONS.	[HTML] [PDF] [RTF]
8. G.S. 14-88.2	◆ 14-88.2. LARCENY, DESTRUCTION, DEFACTION, O...	[HTML] [PDF] [RTF]
9. G.S. 14-72.8	◆ 14-72.8. FELONY LARCENY OF MOTOR VEHICLE PARTS...	[HTML] [PDF] [RTF]
10. G.S. 14-440.1	◆ 14-440.1. UNLAWFUL OPERATION OF AN AUDIOVISU...	[HTML] [PDF] [RTF]
11. G.S. 14-34.9	◆ 14-34.9. DISCHARGING A FIREARM FROM WITHIN A...	[HTML] [PDF] [RTF]
12. G.S. 14-34.2	◆ 14-34.2. ASSAULT WITH A FIREARM OR OTHER DEA...	[HTML] [PDF] [RTF]
13. G.S. 14-32.1	◆ 14-32.1. ASSAULTS ON HANDICAPPED PERSONS; PU...	[HTML] [PDF] [RTF]
14. G.S. 14-160.1	◆ 14-160.1. ALTERATION, DESTRUCTION OR REMOVAL...	[HTML] [PDF] [RTF]
15. G.S. 14-113.33	◆ 14-113.33. PUNISHMENT; LIABILITY.	[HTML] [PDF] [RTF]
16. G.S. 74F-3	◆ 74F-3. LICENSES REQUIRED; VIOLATION.	[HTML] [PDF] [RTF]
17. G.S. 14-318.5	◆ 14-318.5. FAILURE TO REPORT THE DISAPPEARANC...	[HTML] [PDF] [RTF]
18. G.S. 14-34.5	◆ 14-34.5. ASSAULT OR AFFRAY ON A FIREFIGHTER...	[HTML] [PDF] [RTF]
19. G.S. 14-32.4	◆ 14-32.4. ASSAULT INFLECTING SERIOUS BODILY I...	[HTML] [PDF] [RTF]
20. G.S. 14-163.1	◆ 14-163.1. ASSAULTING A LAW ENFORCEMENT AGENC...	[HTML] [PDF] [RTF]
21. G.S. 14-34.7	◆ 14-34.7. ASSAULT INFLECTING SERIOUS INJURY O...	[HTML] [PDF] [RTF]
22. G.S. 14-159.4	◆ 14-159.4. CUTTING, MUTILATING, DEFACTION, OR ...	[HTML] [PDF] [RTF]
23. G.S. 50B-4.1	◆ 50B-4.1. VIOLATION OF VALID PROTECTIVE ORDER.	[HTML] [PDF] [RTF]

NCGA Division Links

- Legislative Library
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- Legislative Drafting Division
- Program Evaluation Division
- Research Division
- Legislative Publications
- NCGA Career Opportunities

Shortcuts

- General Statutes
 - Table of Contents
- Session Laws
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- Votes on Bills
- NCGA Mobile Website
- Help

Helpful Links

- Legislative Calendar
- Staff Contact Info
- America's Legislators Back to School Program
- Homework Resources
- Subscribe to Email Notifications
- nc.gov



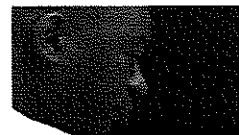
§ 8C-1. Rules of Evidence.
The North Carolina Rules of Evidence are as follows:

Rap

Hayes jams in court to song about killing his 'babies' momma'

Posted September 12, 2013
Updated September 13, 2013

01 19 : 09 Date 7



MORE ON THIS

1. 本報告係根據「國家安全情報處理法」
 第三條之規定，經本會依該法之規定，
 對該法所稱之「國家安全情報」，
 進行蒐集、整理、分析、研究、
 及提供有關該法所稱之「國家安全情報」
 之資料，以供政府、學術、及社會各界
 之參考。

RALPHIE, N.C. — Grand Juries sat rocking to the beat of his own music Thursday afternoon as jurors in his first-degree murder trial for the death of his ex-girlfriend heard a recording of him singing to his "babies' mamma," in which he talked of killing her.

"My babies' mamma, don't talk to me. Don't want your drama. I got two kids by you. I can't take any more from you." He was pouring the convincing.

The song, "Brooklyn Rider," goes on: "I put a price tag on your head. You must have told your attorney I got intentions on killing you."

The state - after calling 47 witnesses and introducing more than 300 pieces of evidence over the last two weeks - rested its case immediately after letting the jury of four men and eight women hear the lyrics.

Wake County prosecutors contend it was a bitter custody

16

Authentication

Foundation for admissibility of video recording:

- (1) whether the camera and recording system were properly maintained and properly operating when made,
- (2) whether video recording accurately presents events depicted, and
- (3) whether there is an unbroken chain of custody.

Snead, p. 21

OTHER EVIDENCE CASES

- 404(b) cases
 - “Too much” evidence (S v Hembree, p. 20)
 - “No connection” to evidence (S v McKnight, p. 22)
- No judicial notice of SBI protocols on appeal
 - S v James, p. 15

SENTENCING & PROBATION



Tolling Donut Hole (Sitosky, p. 36)

- Jamie Markham, *Sitosky Update: The Latest on Probation Tolling*
 - <http://nccriminallaw.sog.unc.edu/sitosky-update-the-latest-on-probation-tolling/>
- Probation may have expired and so may not be revocable, despite purported tolling by new offense, if
 - offense was committed before Dec. 1, 2009
 - person was placed on probation before Dec. 1, 2011
 - probation hearing occurred on or after Dec. 1, 2009

BONUS MATERIAL



Sex Offenses (S v. Hicks, p. 14)

G.S. 14-27(a)(1)

14-27.4A

- | | |
|--|--|
| <ul style="list-style-type: none"> - Statutory sex offense <ul style="list-style-type: none"> ▪ Child is under 13 ▪ Defendant is at least 12 ▪ Defendant is 4 or more years older | <ul style="list-style-type: none"> - Sex offense with child by adult <ul style="list-style-type: none"> ▪ Child is under 13 ▪ Defendant is at least 18 |
|--|--|

"[W]e strongly urge the General Assembly to consider reorganizing, renaming, and renumbering the various sexual offenses to make them more easily distinguishable from one another. . . . We do not foresee an end to this confusion until the General Assembly amends the statutory scheme for sexual offenses."

Sex Offender Requirements

- S v Moore, p 30-31: no showing of delivery for verification form
- S v Barnett, p. 31: insufficient evidence that defendant changed his address
- In re Hall, p. 31: SORNA applies
- State v. Crockett, p. 32: homeless person liable for listing address where he couldn't live
- State v. Davis, p. 33: Offense not aggravated because committed before 10/1/2001 effective date
- Grady v. NC, p. 34: SBM is search

More Evidence Cases

- Admissibility of expert opinion when State doesn't comply with discovery
 - S v Davis, p. 18
- Good character evidence
 - S v Walston, p. 23

Police Dogs

- Dog sniff of luggage in a public place
 - not a search (*Place*, 1983)
- Dog sniff of exterior of vehicle (highway checkpoint or lawful traffic stop)
 - not a search (*Edmond*, 2000; *Caballes*, 2005)
- Dog sniff of home and immediate surroundings
 - search (*Jardines*, 2013)

Miller, p. 7

IMPAIRED DRIVING

- Sisk, p. 27
 - Statutory right to be re-advised of implied consent rights before blood draw was not triggered where D volunteered to submit
- Roberts, p. 27
 - Use of breath test result to establish factual basis for plea and to support aggravating factor to enhance punishment did not violate double jeopardy
- Chavez, p. 27-28
 - Right to have witness for blood alcohol testing performed under G.S. 20-16.2 does not apply to blood draws taken pursuant to a search warrant
 - Failure to allow witness to be present for the blood draw did not violate constitutional rights