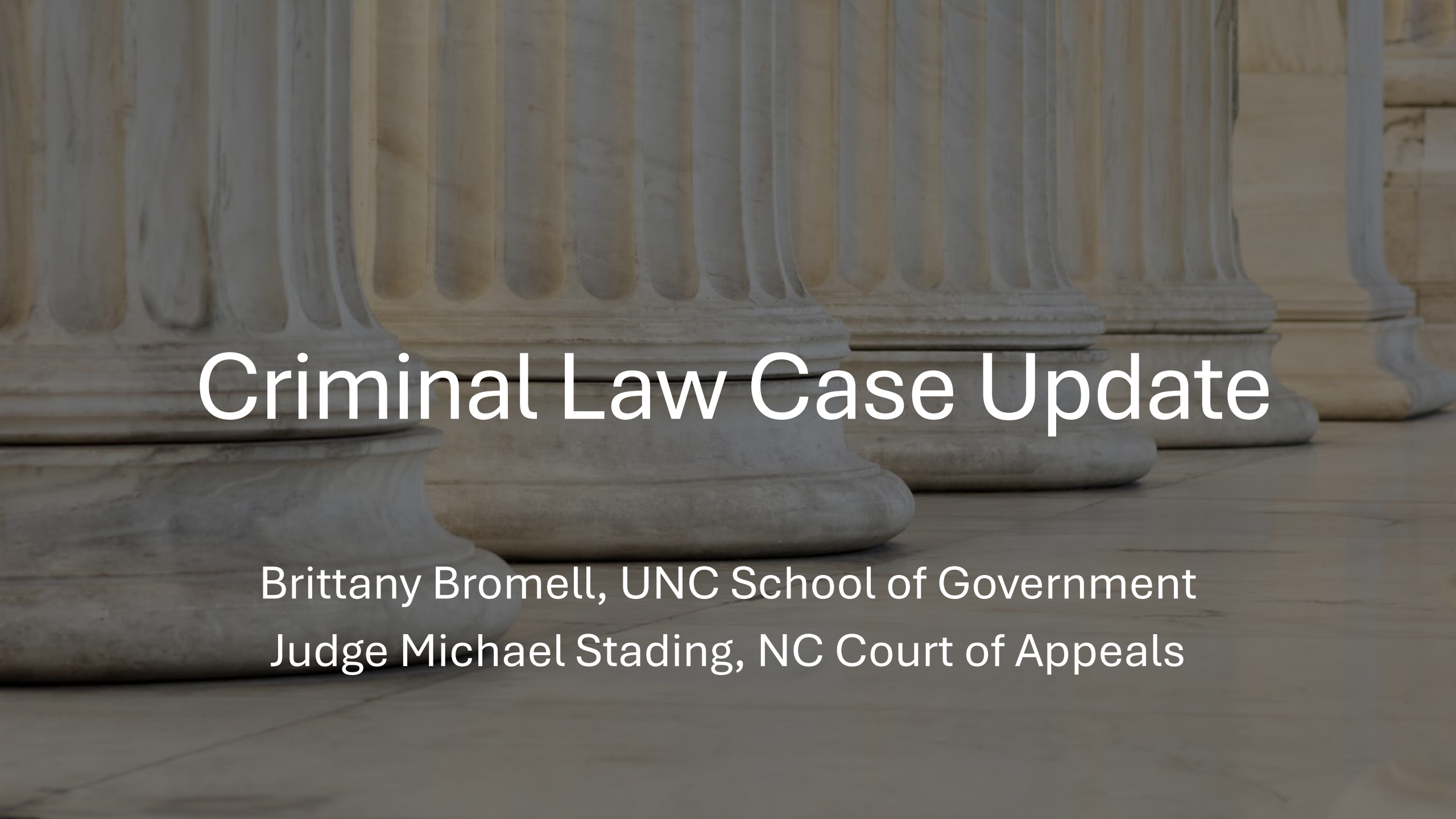

Criminal Law Case Update

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Judge Michael Stading, NC Court of Appeals

UNC | SCHOOL OF GOVERNMENT

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The Pretrial Integrity Act

Brittany Bromell

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PTIA + DWIs

G.S. 15A-533(h)

- Limits a magistrate's authority to set PTR conditions for a D arrested for a new offense while on PTR for another pending proceeding
- Only a judge may set PTR conditions within the first 48 hours after arrest for the new offense.
- A magistrate may set conditions within the first 48 hours after arrest for new offenses involving violations of G.S. Chapter 20, except for:
  - impaired driving, G.S. 20-138.1;
  - impaired driving in a commercial vehicle, G.S. 20-138.2;
  - operating a commercial vehicle after consuming alcohol, G.S. 20-138.2A;
  - operating a school bus, school activity bus, child care vehicle, ambulance, other EMS vehicle, firefighting vehicle, or law enforcement vehicle after consuming alcohol, G.S. 20-138.2B;
  - habitual impaired driving, G.S. 20-138.5; and
  - death or injury by vehicle, G.S. 20-141.4.

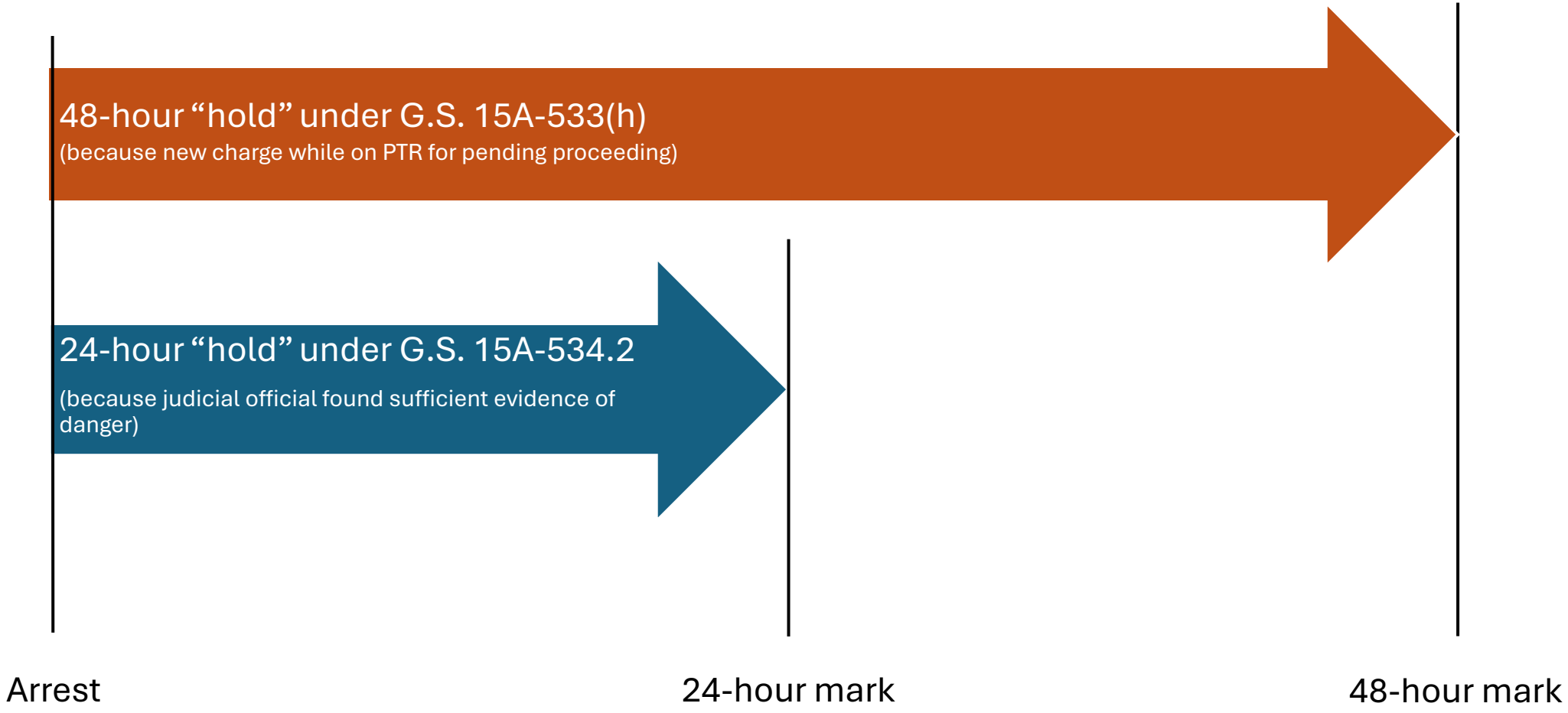
PTIA + DWIs

G.S. 15A-534.2 → “Impaired Driving Hold”

- If at the time of the initial appearance the judicial official finds by clear and convincing evidence that D’s impairment presents a danger of physical injury to himself or others or damage to property if he is released, then the judicial official must order that the defendant be held in custody until one of the requirements of subsection (c) is met.

- D may be denied PTR under this statute for no more than 24 hours.

PTIA + DWIs


48-hour “hold” under G.S. 15A-533(h)
(because new charge while on PTR for pending proceeding)
24-hour “hold” under G.S. 15A-534.2
(because judicial official found sufficient evidence of danger)
Arrest
24-hour mark
48-hour mark

PTIA + DWIs

Being held pursuant to 15A-533(h) is not an automatic trigger of a *Knoll* violation

- Not properly advising D of rights under G.S. 20-38.4
- Denial of access to witnesses or independent testing
- Not properly applying the factors or considering the standard as set forth in G.S. 15A-534.2

State v. Robinson

COA23-564, ___ N.C. App. ___ (June 4, 2024)

- District court retains jurisdiction to modify conditions of pretrial release after defendant gives notice of appeal but before the case is transferred to superior court.

State v. Robinson

COA23-564, ___ N.C. App. ___ (June 4, 2024)

- G.S. 15A-534(e):
  - … a district court judge may modify … any pretrial release order entered by him at any time prior to: (1) In a misdemeanor case tried in the district court, the noting of an appeal …

- G.S. 15A-1431:
  - (c) Within 10 days of entry of judgment, notice of appeal may be given orally in open court or in writing to the clerk. Within 10 days of entry of judgment, the defendant may withdraw his appeal and comply with the judgment. Upon expiration of the 10-day period, if an appeal has been entered and not withdrawn, the clerk must transfer the case to the appropriate court.
  - (d) … The magistrate or district court judge must review the case and fix conditions of pretrial release as appropriate. …
  - (e) Any order of pretrial release remains in effect pending appeal by the defendant unless the judge modifies the order

State v. Robinson

COA23-564, ___ N.C. App. ___ (June 4, 2024)

- District court retains jurisdiction to modify conditions of pretrial release after defendant gives notice of appeal but before the case is transferred to superior court.

- District Court should make findings in support of a secured bond

State v. Tucker, p. 9

- A defendant can demonstrate prejudice by showing he or she would have been released earlier had he or she received a pretrial hearing.

- Showing may be difficult to make in cases in which the defendant has an extremely high bond.

State v. Simpson, p. 8

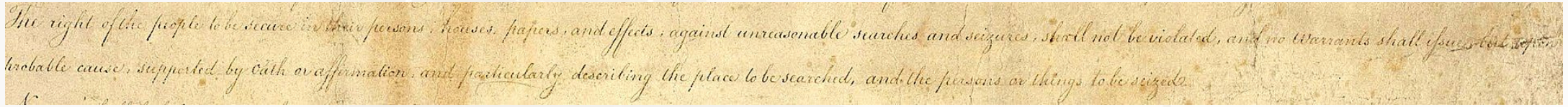
- Defendant must be given notice and an opportunity to be heard on the issue of attorney's fees.

- Trial court must ask defendant personally, not through counsel.

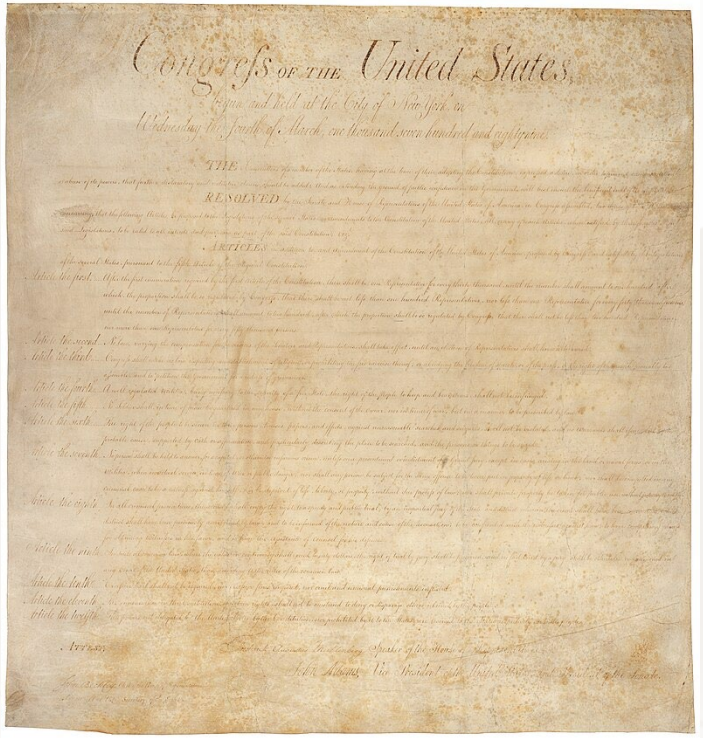
State v. George, p. 1 (Sampson)

- Speeding stop, defendant moving around a lot, shaking, no eye contact, cannot find registration and the deputy sees "marijuana residue" on passenger floorboard and smells "a faint odor of marijuana" from inside the vehicle
- Printer breaks so the deputy gives defendant a verbal warning while returning DL/registration, and defendant begins to argue which leads to the conversation about any drugs in the car – defendant says no drugs
- There is already a canine on scene that sniffs around the car. As the passenger steps out, marijuana seen again and dog alerts to driver side
- Search also reveals heroin, cocaine, defendant tries to eat the evidence
- MTS – defendant challenged extension of the traffic stop because hemp smells like marijuana
- No error because under *Rodriguez*, the duration of a traffic stop must be limited to the length of time that is reasonably necessary to accomplish the mission of the stop . . . unless reasonable suspicion of another crime arose before that mission was completed.
- Possible marijuana is sufficient for RS
- Then we have a dog hit, enough for PC under case law

The Fourth Amendment



The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.



- UNREASONABLE
- Exceptions (exigent, auto, plain view, etc.)
- Mapp v. Ohio, 367 U.S. 643 (1961), applies to states

State v. Guerrero, p. 2 (Union)

- Confidential informant provides info to deputy regarding a man in a Honda leaving a known heroin trafficker's house
- Included information about the driver and car, including the license plate number
- This info was passed to a deputy who saw the vehicle matching the description which then ran a redlight.
- Deputy stops the car, walks up, guy matches description
- During the traffic stop, canine gets a hit on passenger door within one minute, heroin found
- MTS challenging search – argued that reliability of dog hit was in question because hemp smells like marijuana
- Need PC here under automobile exception
- This case clarifies that although hemp and marijuana may smell the same it <u>does not change the case law on a canine hit providing PC to search</u>

State v. Dobson, p. 4 (Guilford)

- Greensboro PD Officers get a report of handgun in plain view located in a driver side door of a Dodge Charger outside of a club
- The officers follow the car and stop it for speeding
- Smell marijuana and “cover scent” on approach which leads to a search of the car
- Defendant is a passenger who is ordered out of the car and marijuana is found where he was sitting
- MTS – defendant argued no PC to search car because the hemp argument again
- This panel sites the automobile exception for search but I was wondering about this: *See State v. Franklin*, 224 N.C. App. 337 (2012) - although a passenger who has no possessory interest in a vehicle has standing to challenge a stop of the vehicle, that passenger does not have standing to challenge a search of the vehicle).
- The Court found PC and held “in this case, law enforcement officers detected the odor of marijuana plus a cover scent. Accordingly, we need not determine whether the scent of marijuana alone remains sufficient to grant an officer probable cause to search a vehicle."

State v. Springs, p. 6 (Mecklenburg)

- Defendant stopped for fictitious tag, was very nervous, shaking, fumbling through papers, and he was driving with a revoked license
- Officer asked about the smell of marijuana in the car and defendant reported that his homeboy probably smoked marijuana in it earlier
- Officer asked defendant to step out of the car, did a Terry frisk
- Defendant holding a Crown Royal bag that he put in the driver's seat
- Officer opened the bag and all kinds of drugs and PDP inside
- MTS – arguing hemp and marijuana smell the same so there was no PC to search the vehicle, motion granted, state appealed
- This panel declined to address whether scent or visual identification alone are PC to search a vehicle, but did not need to because the officer had several reasons in addition to the odor of marijuana to support PC to search the vehicle and, consequently, the Crown Royal bag.
- Trial court was reversed

State v. Michael, p. 5 (Davidson)

- Defendant with 2 passengers stopped for failure to yield
- Officer returns to vehicle to give verbal warning, return license, and tell them free to go
- Defendant acting nervous so officer asks to search
- Defendant says he is on probation so he must consent
- MTS – defendant challenged RS to extend and consent
- Defendant did not object at trial however
- Plain error review shows no error – enough to survive because of the consent
- Judge Arrowood concurred due to plain error analysis but wrote separately to highlight the nervousness in and of itself did not amount to RS

State v. Jackson, p. 3 (Avery)

- Narcotics detective with the Avery Co Sheriff's Office saw defendant drive by and knew his license was revoked. Also the detective had previously arrested defendant and knew him to have prior involvement with narcotics.
- The detective asked defendant to step out for a pat-down and defendant told him a pocketknife was in his pants pocket
- Led to removal of a travel pill bottle with oxycodone and no prescription
- Handcuffs are placed on defendant, the frisk continued, and crystal meth was found in defendant's boot where he had partially tucked in his pants
- Arrested for possession of meth, misd possession sch. II CS, cited for DWLR
- MTS - defendant challenged seizure of pill bottle and any search incident to arrest because cited for DWLR
- Majority rejected the plain-feel doctrine exception for the pill bottle previously applied to a film canister by our Court.
- Citing a Colorado case, the majority decided the pill bottle should not have been seized BUT inevitable discovery and search incident to arrest would have produced the evidence in any event

State v. Hagaman, p. 7 (Watauga)

- Detective with Boone PD conducting an undercover operation involving distribution of CP on a file-sharing network
- Using the IP address associated with some uploads, the detective determined they originated from the residence of defendant
- Applied for and received a search warrant for the residence to include any documents that could include passwords
- When executing the search warrant and looking for passwords, law enforcement came across a notebook labeled “substance abuse recovery” which contained evidence of a crime committed by defendant against a minor and thereby led to more warrants and evidence of this new crime
- Defendant indicted for multiple offenses
- MTS – defendant argued evidence seized in excess of scope of warrant, and defendant moved to quash second set of resulting warrants
- The panel noted defendant’s labeling of the notebook did not control
- The Court ultimately held that the search was conducted in accordance with a properly issued search warrant to search Defendant's home for "[a]ny and all documents and records pertaining to the purchase of any child pornography" and "notations of any password that may control access" to a computer. During execution of the warrant an officer looking for a "passcode" happened to find evidence of another crime, and then sought another search warrant.
- Therefore the trial court’s denial of defendant’s MTS was upheld

State v. Coffey, p. 19

[Defendant] unlawfully, willfully and feloniously with deceit and intent to defraud, did commit the infamous offense of obstruction of justice by knowingly providing false and misleading information in training records indicating that mandatory in-service training and annual firearm qualification had been completed by [Sheriff Wilkins/Chief Deputy Boyd] . . . knowing that it had in fact not been completed, and knowing that these records and/or the information contained in these records would be and were submitted to the North Carolina Sheriffs' Education and Training Standards Division thereby allowing [Sheriff Wilkins/Chief Deputy Boyd] to maintain his law enforcement certification when he had failed to meet the mandated requirements.

State v. Coffey, p. 19

- Obstruction of justice (CL)
  - Any act which prevents, obstructs, impedes or hinders public or legal justice.

- Must be done for the purpose of hindering or impeding a judicial or official proceedings or investigation or potential investigation, which might lead to a judicial or official proceeding.

State v. Lancaster, p. 19-20

- COA 2022 previously held:
  - (1) Indictment for going armed to the terror of the public must allege an act on a public highway; and
  - (2) a private apartment complex parking lot does not represent a public highway for purposes of going armed to the terror of the public.

State v. Lancaster, p. 19-20

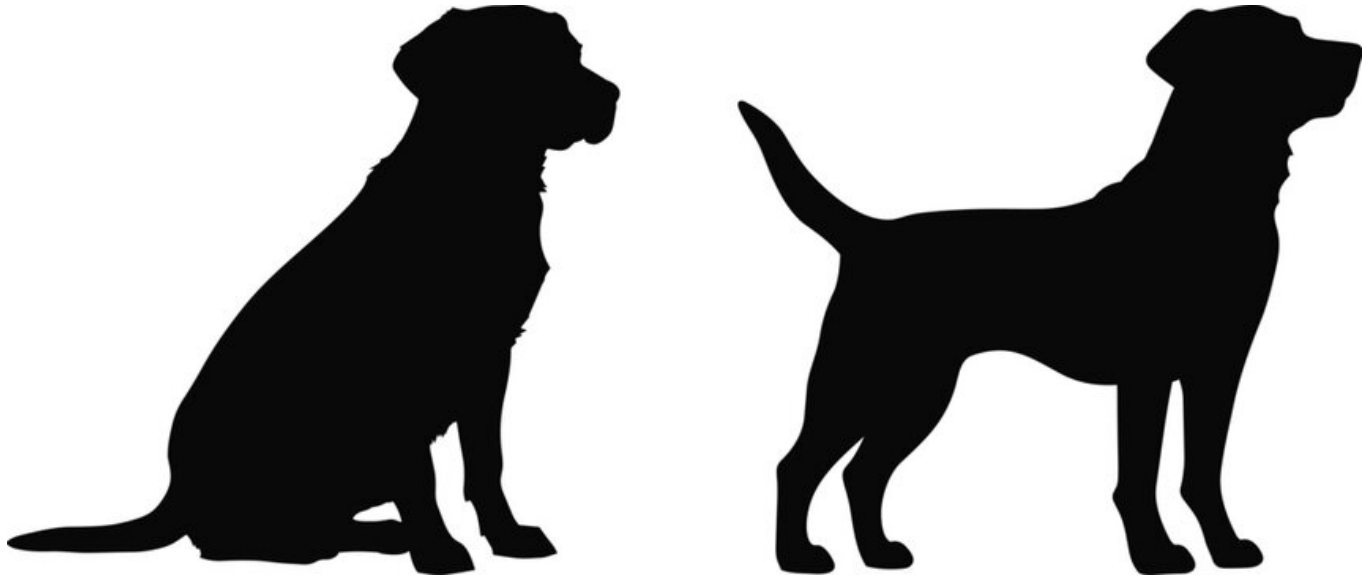
A person guilty of this offense

- (1) arms himself or herself with an unusual and dangerous weapon
- (2) for the purpose of terrifying others and
- ~~(3) goes about on public highways~~
- (4) in a manner to cause terror to the people.

❖ State v. Dawson, 272 N.C. 535 (1968); State v. Huntly, 25 N.C. 418 (1843)

A person guilty of this offense:

- (1) goes about armed with an unusual and dangerous weapon,
- (2) in a public place,
- (3) for the purpose of terrifying and alarming the peaceful people, and
- (4) in a manner which would naturally terrify and alarm the peaceful people.



State v. Doherty, p. 15

A single kick to a dog constituted “cruelly beat” for felony cruelty to animals.

State v. Buck, p. 16

- D charged with AWDWIKISI and felony hit and run

- Definition of “crash” for G.S. 20-166 (hit and run) includes intentionally hitting victim with vehicle.

State v. Hill, p. 17

- Defendant's use of a price label sticker from another product did not represent larceny by product code under G.S. 72.11(3).

- Where a defendant transfers a legitimate product code printed on the price tag from one product to another, likely more punishable under G.S. 14-72.1(d).

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