

2013 Criminal Law Case and  
Legislative Update: Part II

Shea Denning  
School of Government  
October 17, 2013

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Legislation

**CHEMICAL ANALYSES**

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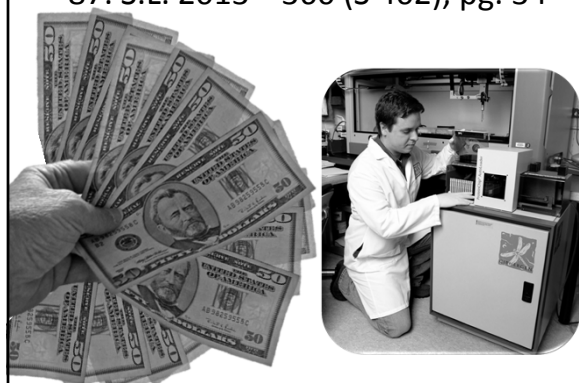
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87. S.L. 2013—360 (S 402), pg. 34



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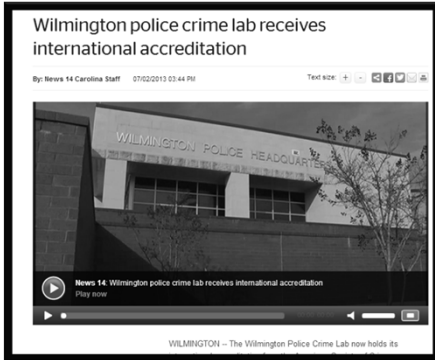
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46. S.L. 2013-194 (S 285), pg. 17



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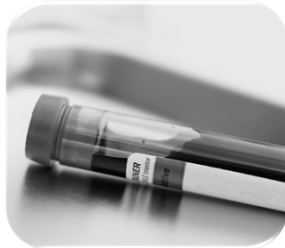
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S.L. 2013-194 (S 285), pg. 17



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Legislation

**IMPLIED CONSENT OFFENSES**

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**85. S.L. 2013-348 (S 659), pg. 28**

- DWI Sentencing Changes
- Level II, based on
  - Prior conviction, or
  - DWLR for an impaired driving revocation
 AND prior conviction occurred within 5 years
- If sentence suspended and no imprisonment imposed (because of CAM requirement), then sentence must require 240 hours of community service
- Effective for offenses on/after 10/1/2013

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Level	Factors	Minimum Sentence	Max Sentence	If Suspended, Special Probation Requiring:	Max Fine
A1	3 GAFs	12 months	36 months	Imprisonment of at least 120 days + 120 days CAM	\$10,000
1	2 GAFs or 1 minor/disabled GAF	30 days	24 months	Imprisonment of at least 30 days, or imprisonment of at least 10 days + at least 120 days CAM	\$4,000
2	1 GAF	7 days	12 months	Imprison. of at least 7 days, or at least 90 consec. days CAM* (*10/1/13: 240 hr. CS req.)	\$2,000
3	Agg. > Mitig.	72 hours	6 months	Imprison. of at least 72 hrs And/or at least 72 hrs CS	\$1,000
4	Agg= Mitig.	48 hours	120 days	48 hrs imprisonment And/or 48 hrs CS	\$500
5	Mitig. > Agg.	24 hours	60 days	24 hrs imprisonment And/or 24 hrs CS	\$200

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**85. S.L. 2013-348 (S 659), pg. 29**




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85. S.L. 2013-348 (S 659), pg. 28

- Eliminates automatic family-member ignition interlock exception
  - DMV may apply case by case
  - Court MAY NOT apply at DWLR trial
- Medical ignition interlock exception applies only to 0.15 interlocks
  - Not to prior conviction interlocks
  - Level A1 interlocks
- Effective for offenses on/after 10/1/2013



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23. S.L. 2013-105 (H 532), pg. 10



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23. S.L. 2013-105 (H 532), pg. 10



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Legislation

**GENERAL MOTOR VEHICLE**

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62. S.L. 2013-243 (H 656), pg. 21



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62. S.L. 2013-243 (H 656), pg. 21

- Motor vehicle driven by person charged with FSTE must be seized
- Seizure/forfeiture follow DWI seizure/forfeiture process
- If underlying offense resulting in seizure is FSTE, and defendant is convicted of MSTE defendant must pay towing and storage costs as restitution
- If D convicted of FSTE, DMV must revoke registration of all motor vehicles registered in person's name

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72. S.L. 2013-293 (H 428), pg. 23



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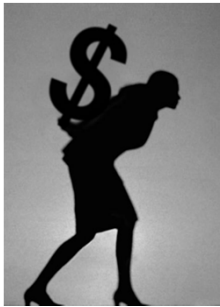
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72. S.L. 2013-293 (H 428), pg. 23



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89. S.L. 2013-366 (S 353), pg. 35



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**89. S.L. 2013-366 (S 353), pg. 35**

- Amends G.S. 20-154 (unsafe movement)
- Effective for violations on/after October 1, 2013
- Unsafe movement resulting in crash causing
  - property damage > \$5,000 or
  - serious bodily injury to motorcycle operator or passenger
 an infraction, fine not less than \$750
  - Violation treated as failure to yield right of way to motorcycle: 4 driver’s license points
  - Judge may suspend driver’s license for 30 days

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**106. S.L. 2013-415 (H 15), pg. 45**




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**106. S.L. 2013-415 (H 15), pg. 45**

- Adds certain law enforcement agencies to statutes in Ch. 20 involving
  - special lights, sirens, horns (20-125)
  - use of red and blue lights (20-130.1)
  - inapplicable speed limits (20-145)
  - yield right of way (20-156) and
  - move over laws (20-157).
- Parks and Recreation, Forest Service, and Marine Fisheries
- Effective October 1, 2013

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Cases  
**DWI**

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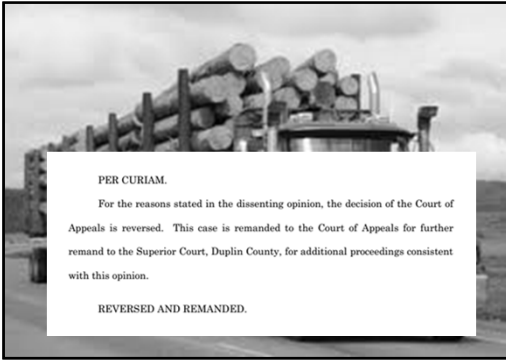
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State v. McKenzie, NCSC, 10/4/2013



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Cases  
**STOPS**

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Stop must be supported by reasonable, articulable suspicion

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But when is defendant stopped?

- *California v. Hodari D.*, 499 U.S. 621 (1991)
  - Show of authority without suspect’s submission is not a Fourth Amendment seizure
- *State v. Isenhour*, 194 N.C. App. 539 (2008)
  - Defendant not seized when armed, uniformed officers parked patrol car eight feet in front of his car, which was parked in a parking lot, and approached his car

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State v. Knudsen, N.C. App., pg. 2



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State v. Knudsen, N.C. App., pg. 2



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State v. Knudsen, N.C. App., pg. 2



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State v. Knudsen, N.C. App., pg. 2



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### State v. Verkerk, N.C. App., pg. 3



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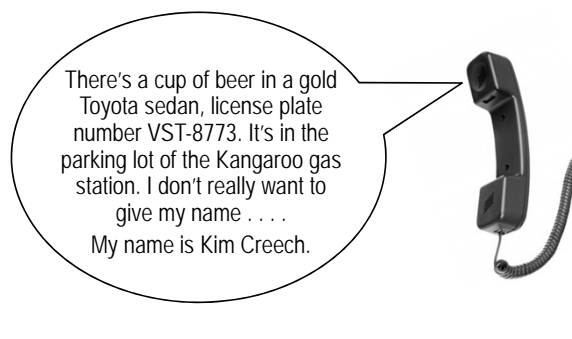
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### State v. Coleman, N.C. App., pg. 3



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### State v. Coleman, N.C. App., pg. 3

- Did tip provide reasonable suspicion?
- Tip did not allege crime.
- Officer's mistaken belief that tip alleged crime was not objectively reasonable. (*State v. Heien*)
- Even if it was reasonable, tip was insufficiently reliable.
  - Defendant not identified
  - No way for officer to assess her credibility
  - No information concerning defendant's future actions

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Cases

**BRADY AND DISCOVERY**

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State v. Marino, N.C. App., pg. 6

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4 <html xmlns="http://www.w3.org/1999/
  xhtml">
5   <head>
6     <meta http-equiv="Content-
  Type" content=
7       "text/html; charset=us-
  ascii" />
8     <script type="text/
  javascript">
9       function reDo() {top.
  location.reload();}
10      if (navigator.appName ==
  'Netscape') {top.onresize = reDo;}
11      dom=document.
  getElementById;
12     </script>
13   </head>
14   <body>
```

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State v. Marino, N.C. App., pg. 6

- Trial court did not err by denying defendant's motion to examine Intoximeter source code
- Not *Brady* material as defendant failed to show it was favorable and material
- D found guilty under appreciable impairment and per se theories, so did not affect outcome
- G.S. 15A-901 (discovery for cases within original jurisdiction of superior court) does not violate due process

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Cases  
**CONFRONTATION CLAUSE**

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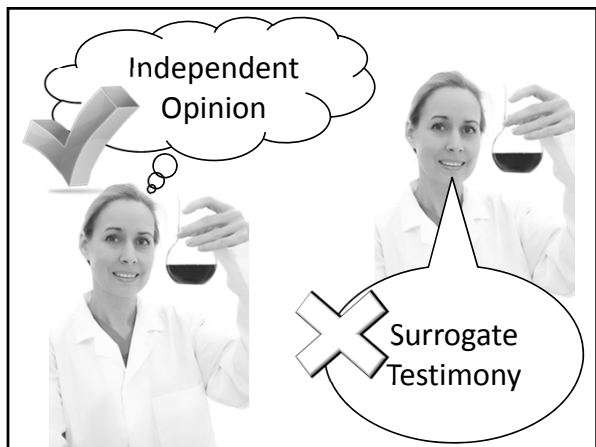
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No Confrontation Clause Violation	Confrontation Clause Violation
<ul style="list-style-type: none"><li>• State v. Ortiz-Zape, NCSC, pg. 7<ul style="list-style-type: none"><li>– Substitute analyst testified to her opinion that substance was cocaine</li><li>– Based on independent analysis of testing performed by another analyst</li></ul></li><li>• State v. Hurt, NCSC, pg. 9<ul style="list-style-type: none"><li>– Reversed per curiam</li></ul></li></ul>	<ul style="list-style-type: none"><li>• State v. Craven, NCSC, pg. 9<ul style="list-style-type: none"><li>– Analyst merely recited opinion of non-testifying analysts that substances were cocaine</li></ul></li></ul>

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State v. Call, N.C. App., pg. 10




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Inventory		Inventory	
Item	Quantity	Item	Quantity
1	12	12	12
2	12	12	12
3	12	12	12
4	12	12	12
5	12	12	12
6	12	12	12
7	12	12	12
8	12	12	12
9	12	12	12
10	12	12	12
11	12	12	12
12	12	12	12
13	12	12	12
14	12	12	12
15	12	12	12
16	12	12	12
17	12	12	12

Mr. Pedone, we have a loss of product.

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Testimonial?

- Statements
  - Not made in response to police interrogation or at formal proceeding
  - Made outside of presence of police and before defendant was charged
  - Not testimonial
- Receipt
  - Purpose was to release property from police to Wal-Mart
  - Defendant not yet a suspect
  - Form does not connect D to stolen property
  - Purpose was to establish ownership, quantity and type of formula released to Wal-Mart
  - Not testimonial

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Cases

**OF GENERAL INTEREST**

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State v. Grooms, N.C. App., pg. 14

- Second-degree murder prosecution arising from DWI
- Former girlfriend testified about DWI incident on same road two months earlier
- Testimony admissible to show malice

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State v. Barnes, N.C. App., pg. 16



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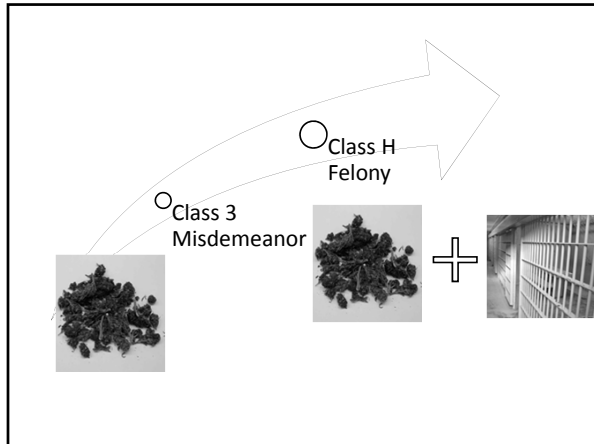
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Voluntary Act?  
Defendant taken to jail  
in handcuffs.

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