Criminal Law Case Update (Part I)

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Topics

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

State v. McKenzie (p. 26)

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 have 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.

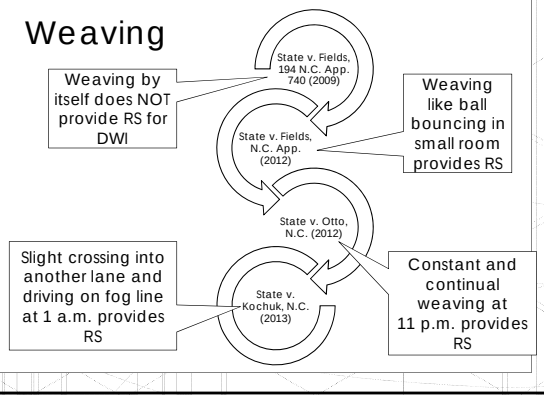
State v. Canty (p. 4)

- "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)

WTF, Man

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

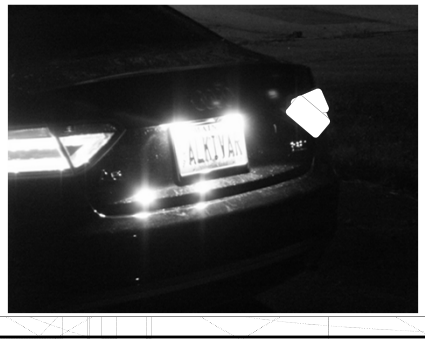
State v. Franklin (p. 4)

- 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) (NC App)



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.

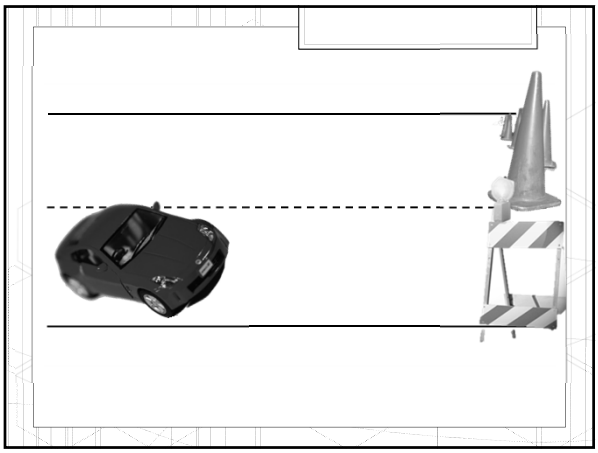
1. Lawful
2. Unlawful

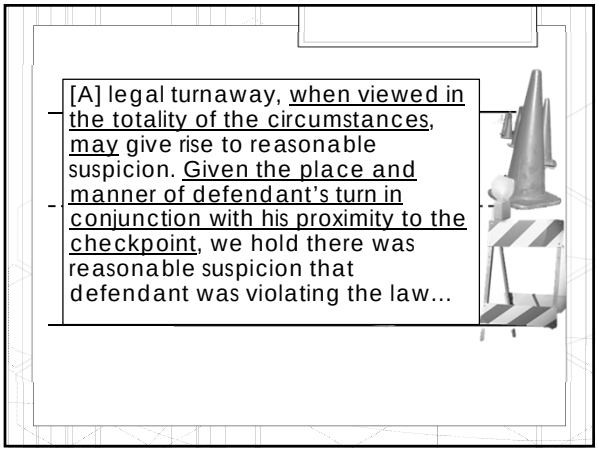
State v. Phifer (p. 4)

Nervous pacing insufficient for frisk

http://cllrlesterholloway.files.wordpress.com/2012/06/cops_search_man_london.jpg

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





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

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.

Florida v. Jardines

- Using drug sniffing dog on a homeowner's porch is a Fourth Amendment search.

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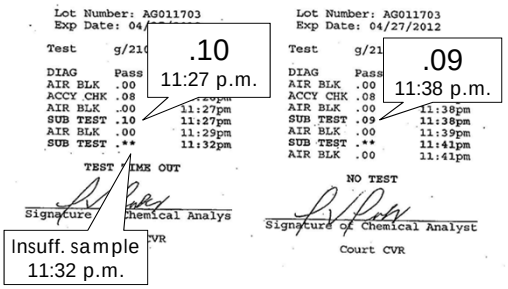
Criminal Procedure & DWI

Motions to Dismiss: Wilson (p. 15)

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)



Other Crimes

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

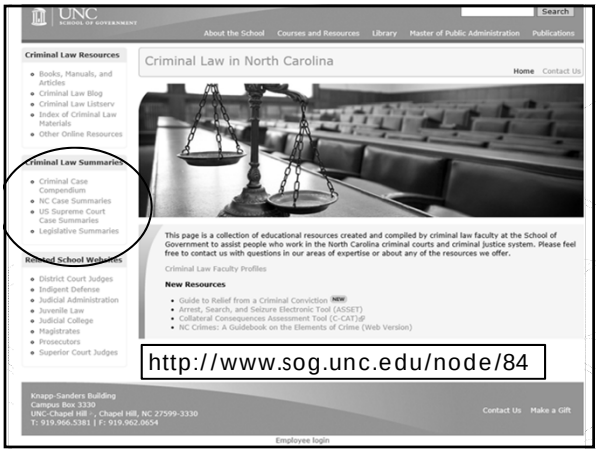
1. Yes
2. No

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



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