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CASE LIST

RS (alphabetized by 1st defendant's last name):

1. State v. Adkerson & Eanes, 90 N.C. App. 333 (1988) Weaving and run off road
1x= rs.
2. U.S. v. Arvizu, 122 S.Ct. 744 (2002) Bad case- Legal behavior can lead to RS.
3. State v. Aubin, 100 N.C. App. 628 (1990) Bad case. Slow driving and weaving=reas
susp. pre-Wrenn.
4. State v. Barnard, 62 N.C. 244, 65 (2008) 30 sec. delay @ green light equals rs. Bad
case. (But see State v. Roberson)
5. State v. Battle, 109 N.C. App. 367 (1993) R.S. defined.
6. State v. Bonds, 139 N.C.App. 627 (2000) Bad case. R.S. equals combo of all factors
(here, window down in cold weather).
7. State v. Braxton, 90 N.C.App. 204 (1988) Furtive movement does not lead to r.s. No
authority to arrest for infraction.
8. US v. Brignoni-Ponce, 422 U.S. 873 (1975) RS defined: Mexican not enough.
9. State v. Burke, __ N.C. App. __, 712 S.E.2d 704 (2011), affirmed by NC Supreme Court
on January 27, 2012. Low number 30-day tag not = r.s. Can't guess on RS.
The officer stopped the vehicle because **the numbers on the 30-day tag
looked low and that the "low" number led him to "wonder[] about
the possibility of the tag being fictitious."** The court noted that it has
previously held that 30-day tags that were unreadable, concealed,
obstructed, or illegible, justified stops of the vehicles involved. Here,
although the officer testified that the 30-day tag was dirty and worn, he
was able to read the tag without difficulty; the tag was not faded; the
information was clearly visible; and the information was accurate and

proper.

10. Illinois v. Caballes, 543 U.S. 405 (2005) Fisher/Falana; dissent good. How long can you be held after a stop?
11. State v. Campbell, 188 N.C.App. 701 (2008) Mere proximity to crime not enough
But here there was more and thus enough for rs.
12. State v. Chlopek, 704 SE2d 563 (2011) Suspicious not enough.
13. Webb v. Clark, 264 N.C. 474 (1965) Spinning tires not equal to careless and reckless.
14. State v. Clyburn, 120 N.C. App. 377 (1995) Search of auto for carrying concealed weapon, r.s. rules. (pre Gant).
15. State v. Cooper, 86 N.C.App. 100 (2007) Report that black male committed armed robbery without more did not provide police officer with reasonable suspicion of criminal activity to justify stop and frisk.
16. State v. Cope, 204 N.C. 28, 167 S.E. 456 does not involve actual danger to life, limb or property would not perforce constitute the criminal offense reckless driving.
17. State v. Covington, 138 N.C.App. 688 (2000) RS defined.
18. State v. Davis, 165 N.C. App. 545 (2004) **Unpublished**, weaving within 1 lane for more than .5 mile, then crossing the center line, + 10 miles below speed limit enough for r.s.
19. FL. v. Diaz, 800 So.2d 326 (2001) Stop based on mistake not ok.
20. U.S. v. Doyle, 2011 WL 1957677 evidence excluded based on search warrant defective as to time (staleness)
21. State v. Falana, 129 N.C. App. 813 (1998) Once orig. purpose of stop done-need additional r.s. to continue.
22. State v. Fields, 673 S.E.2d 765 (2009) Weaving is not enough for r.s.

23. State v. Fisher, 141 N.C.App. 44 (2000) After traffic stop, need r.s. for further detention.
24. State v. Foster, NO. 09-5161 (2010) NO RS.
25. United States v. Fountain, Foster, 2011 WL 857785 (2011)NO RS. Panel deeply troubled by Government's attempts to spin defendant's "largely mundane acts into a web of deception"s.
26. State v. Fleming, 106 N.C. App. 165 (1992) Follows Brown v. Texas. Not a car case.
27. State v. Harwood Anonymous Tip not enough.
28. State v. Hayes, 88 N.C.App. 313 (2008) Follow Fleming, this is a car case.
29. State v. Heien, 714 S.E.2d 827 (2011)1 brake light is enough. Write of supersedes and review allowed to NC Supreme Court, 1/26/12.
30. State v. Hernandez, 170 N.C.App. 299 (2005) Held after stop ok, but must be short (under 10 minutes). Also, here there was consent to search.
31. State v. Hess, 185 N.C.App. 530 (2007) Driver revoked = rs.
32. State v. Hiatt, 184 N.C. App. 190 (2007) Blue lights= stop. **Unpublished**
33. State v. Hodges, 672 S.E.2d 724 (2009) Interprets Falana. Held yes to RS here.
34. State v. Hopper, 2010 W.L. 1541791 (2010) RS. Mistake of fact ok mistake of law not ok. **Unpublished**
35. State v. Ivey, 360 N.C. 562 (2006) No turn signal is not PC to stop. (But see St. v. Styles)
36. State v. Jacobs, 162 N.C. App. 251 (2004) Rs where officer observed defendant's car weaving within its lane of travel for three-quarters of a mile at 1:43 a.m. in an area near bars.
38. State v. Johnson, 204 N.C.App.259, 264,693 S.E.2d 711, 714-715 (2010) "Defendant contends that the trial court committed error by upholding the warrantless stop of his car based solely on the information provided to the police by an anonymous tipster. We conclude that, while the tip at issue included identifying details of a person and car

allegedly engaged in illegal activity, it offered few details of the alleged crime, no information regarding the informant's basis of knowledge, and scant information to predict the future behavior of the alleged perpetrator. Thus, given the limited details contained in the tip, and the failure of the officers to corroborate the tip's allegations of illegal activity, the tip lacked sufficient indicia of reliability to justify the warrantless stop in this case.

39. State v. Jones , 96 N.C. App. 389 (1989) Weaving and slow driving = r.s.
40. Rowe v. Maryland, 363 Md. 424, 769 A.2d 879 (2001) Driver's momentary crossing of edge line of roadway and later touching of that line did not amount to unsafe lane change or unsafe entry onto the roadway, conduct prohibited by statute, and did not support traffic stop. Driver's momentary crossing of edge line of roadway and later touching of that line did not rise to level necessary to justify traffic stop on the ground that it was community caretaking stop for purposes of providing assistance.
41. U.S. v. Mayo, 361 F.3d 802 (2004) An encounter occurring in a high-crime area that was targeted for special enforcement by police does not support reasonable suspicion unless coupled with other suspicious activity.
42. State v. McClendon, 350 N.C. 630, 517 (1999) R.S.= nervous and problems with car ownership.
43. State v. McLamb, 186 N.C.App. 124 (2007) Cop's mistake as to speed limit gives no p.c. to stop.
44. State v. McRae, NO. COA09-114 No turn signal can be rs. Reliable informant tip can supply PC or RS.
45. Kansas v. Morris, 276 Kan. 11 (2003) Blue lights and stop are equal to a seizure, and so need r.s.
46. State v. Murray, 192 N.C.App. 684 (2008) Police officer lacked reasonable suspicion when he stopped a vehicle to find out why it was traveling in an area with a history of break-ins.
47. State v. Myles, 654 S.E.2d 752 (2008) Passenger's nervousness not enough for r.s. Falana
48. State v. Otto, 726 S.E.2d 824 (2012) defendant's continual weaving for a three-quarter mile distance at 11:00 pm on a Friday gave officer a reasonable suspicion sufficient to initiate a traffic stop.

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| 49. | State v. Rhyne, 124 N.C.App. 84 (1996) | Pat down not ok. |
| 50. | State v. Roberson, 240 N.C. 745 (1954) | Skidding + wreck equals C&R. |
| 51. | State v. Roberson, 592 S.E.2d 733 (2004) | 6 second delay at green light is not RS. |
| 52. | State v. Schiffer, 132 N.C.App. 22 (1999) | Windshield tinting enough for rs. Car search o.k. (Pre Gant). |
| 53. | State v. Sellars, NO.COA11-1315 (2012) | Falana. Not good-look at how long stop extended. |
| 54. | State v. Styles, 362 N.C. 412 (2008) | No turn signal when changing lanes can be enough to stop. |
| 55. | State of Texas v. Tarvin, 972 S.W.2d 910 (1998) | Weaving not enough, driving = Controlled weaving. |
| 56. | State v. Thompson & Hardee, 296 N.C. 703 (1979) | R.S. defined, bad case. |
| 57. | State v. Warren, NO. COA02-1693 | No blue lights= no stop. Unpublished |
| 58. | State v. Watson, 122 N.C. App. 596 (1996) | RS defined. |
| 59. | U.S. v. Whren and Brown, 517 U.S. 806 (1996) | Any objective reason is enough for RS. |
| 60. | U.S. v. Wilson, 205 F.3d 720 (2000) | Can't see the tag not enough for RS. |
| 61. | State v. Young, 148 N.C.App. 462 (2002) | RS is an objective inquiry; anonymous tip enough here. |

RS Misc Stuff

1. SFST Analysis Form
2. Traffic Stops-Article from IOG
3. Analysis of legality of running tags without r.s.
4. "Passing and being passed " from Motor Vehicle Law of North Carolina (not illegal to pass on a double yellow line).
5. List of speed and weaving cases.

ANONYMOUS TIP

1. State v. Allen, 676 S.E.2d 519 (2009) In person tip more reliable. Good law discussion for the State.
2. State v. Brown, 142 N.C. App. 332 (2001) Anonymous tip not enough-follows Florida v. J.L.
3. State v. Crowell **Unpublished.** Not anonymous tip proven if tipster reliable.
4. State v. Garcia, 677 S.E.2d 555 (2009) A less than reliable anonymous tip may still provide a basis for reasonable suspicion if supported by sufficient police corroboration.
5. Harris v. Commonwealth of VA, 262 Va. 407 (2001) Anonymous tip not enough
6. State v. Harwood, NO. COA11-1513 Anonymous Tip not ok. Seizure when defendant blocked in by officers (+more)
7. State v. Hudgins, 672 S.E.2d 717 (2009) Anonymous tip, bad case.
8. State v. Hughes, 353 N.C. 200 (2000) Anonymous tip, good case.
9. U.S. v. Hughes, 517 F.3d 1013 (2008) Anonymous tip not enough to pat down.
10. FL v. J.L., 529 U.S. 266 (2000) Anonymous tip rules.
11. State v. Maready, 362 N.C. 614 (2008) Anonymous tip, bad case.
12. State v. Mcarn, 159 N.C. App. 209 (2003) Need details of crime, not just behavior, to get to RS.
13. State v. Morton, 679 S.E.2d 437 (2009) Good case. Anonymous tip reliability.
14. State v. Peele, 675 S.E.2d 682 (2009) Anonymous tip and weaving not r.s.
15. U.S. v. Reaves, 512 F.3d 123 (2008) Anonymous tip alone not enough.
16. State v. Robinson, 148 N.C. App. 462 (2002) Anonymous tip not enough, but search ok.

17. State v. Sanchez, 147 N.C. App. 619 (2001) Face-to-face informant tip reliable.
18. State v. Young, 148 N.C. App. 462 (2002) RS is objective, anonymous tip ok here.

ROADBLOCK CASES

1. State v. Barnes, 123 N.C.App. 144 (1996) No discretion allowed at checkpoint.
2. State v. Bowden, 177 N.C. App. 718 (2006) A turn away from a checkpoint roadblock can lead to RS.
3. State v. Burroughs, 185 N.C.App. 496 (2007) Upholds *Rose* and *Edmond*.
4. State v. Colbert, 146 N.C.App. 506 (2001) Roadblock plan ok.
5. State v. Collins, NO. COA11-529 Avoid roadblock means rs analysis, not checkpoint stop.
6. State v. Corpening, 683 S.E.2d 457 (2009) Not a checkpoint stop.
7. Indianapolis v. Edmond, 531 U.S. 32 (2000) Roadblock to serve general interest in crime control violates 4th amendment.
8. State v. Foreman, 351 N.C. 627 (2000) Okay to stop for u-turn at roadblock if RS. (Here there was R.S.; no roadblock analysis necessary).
9. State v. Gabriel, 192 N. C. App. 517 (2008) Checkpoint rules.
10. State v. Grooms, 126 N.C. App. 88 (1997) Every driver must be treated the same.
11. State v. Jarrett, NO. COA09-1036 Roadblock. Bad Ruling.
12. State v. Kincer, NO. COA09-1639 Checkpoint-good on explaining the rules.
13. IL. v. Lidster, 540 U.S. 419 (2004) Roadblock to get information on hit and run ok.
14. State v. Mitchell, 358 N.C. 63 (2004) Defendant's not stopping for checkpoint or his "headlong flight" supplied RS. Roadblock ok for NOL.
15. State v. Nolan, No. COA 10-518 Roadblock case-this case ok.

16. State v. Rose, 170 N.C. App. 284 (2005) Roadblock needs primary purpose. Multi-purpose checkpoint is illegal. Must be carefully tailored to purpose.
17. State v. Sanders, 112 N.C. App. 477 (1993) No unconstrained discretion allowed.
18. Michigan v. Sitz, 496 U.S. 444 (1990) Roadblock rules, citing Delaware v. Prouse, 440 US 648 (1979).
19. U.S. v. Smith, 396 F.3d 579 (2005) Defendant's evasive behavior regarding roadblock supports finding of reasonable suspicion for stop.
20. State v. Tarlton, 146 N.C.App. 417 (2001) Roadblock-supervisor not necessary, written not necessary.
19. State v. Veazey, 689 S.E.2d 530 (2009) Bad checkpoint case. Ruling mostly based on poor appellate advocacy and trail work.

Roadblock Misc Stuff

1. Order in Robinson Checkpoint not okay.

SEARCH/SEIZURE

1. State v. Alston, 131 N.C. App. 514 (1998) Constructive possession of gun not imputed to passenger.
2. State v. Artis, 344 N.C. 633 (1996) Pat down search not okay. (Pants pocket bulge).
3. U.S. v. Bond, 213 F.3d 840 (2000) Police squeezing bag in overhead bin in bus not ok. Plain feel not enough!
4. State v. Bostick, 501 U.S. 429 (1991) Bus search rules, consent to search.
5. State v. Braxton, 90 N.C.App. 204 (1988) Need P.C. to search
6. Caldwell v. State, 780 A.2d 1037 (2001) The officer's citing a defendant with a parking violation does not then permit the officer to frisk and handcuff the defendant and detain him until another officer arrives.
7. State v. Carter, 682 S.E.2d (2009) Search and seizure of car incident to arrest for expired tag is lawful.
8. State v. Carty, 170 N.J. 632 (2002) After traffic stop need reas. susp to search car. (NJ)

constitution stricter than US Constitution, as is NC Constitution).

9. State v. Cooke, 306 N.C. 132 (1982) Explains exceptions to warrant requirement.
10. State v. Fleming, 106 N.C. App. 165 (1992) Pat down after arrest requires probable cause.
11. AZ. v. Gant, 129 S.Ct. 1710 (2009) No search of car after charge unless related to charge or defendant in car when arrested.
12. State v. Hedgecoe, Jr., 106 N.C.App. 157 (1992) Paraphernalia must be connected to drugs.
13. CO v. Heilman, 52 P.3d 324 (2002) Search not consensual because officer's asked.
14. WY v. Houghton, 526 U.S. 295 (1999) Refines consent to search.
15. State v. Icard, 363 N.C. 303 (2009) P.C. is needed to detain defendant.
16. State v. Jackson, 681 S.E.2d 492 (2009) Passenger has standing to contest unconstitutional stop.
17. State v. Mbacke, not in westlaw 1/31/12, ___ N.C. ___ (2012) bad case re: Gant search
18. Jones v. U.S., 362 U.S. 257 (1960) Needs reasonable corroboration of informant's statement for PC.
19. Knowles v. Iowa, 525 U.S. 113 (1998) Search after traffic citation, even if consent, not ok.
20. U.S. v. Lattimore, 87 F.3d. 647 (1996) Consent to search after traffic stop.
21. U.S. v. Maple, 348 F.3d 260 (2003) Search of car's closed compartment must be reasonable and must follow police procedure.
22. State v. McDougald, 665 S.E.2d 99 (2008) Search with consent from one resident with another nonconsenting resident present is not ok in private areas.
23. Mincey v. Arizona, 437 U.S. 385 (1978) Emergency exception to 4th Amendment warrant requirement.
24. State v. Minor, 132 N.C. App. 478 (1999) Search of car when the defendant gets out of a car is not okay without more information. (movement not "furtive.")

25. State v. Pearson, 348 N.C. 272 (1998) Consent to search vehicle does not include a pat down, pat down “protective” search not okay.
26. State v. Poczontek, 90 N.C. App. 455 (1988) PC, informant, plain view? Good case.
27. GA v. Randolph, 547 U.S. 103 (2006) Search case- 1 resident says yes, one says no, no consent, no search.
28. Commonwealth of VA v. Rice, 28 Va. App. 374 (1998) If cop holds DL, defendant not free to leave and therefore his consent is invalid.
29. OH v. Robinette, 519 U.S. 33 (1996) When is consent to illegal search freely given?
30. U.S. v. Antoine Jones, 566 U.S. _____ (2012), GPS track requires warrant.
31. U.S. v. Sakyi, 160 F.3d 164 (1998) Legal to frisk passenger if RS exists.
32. U.S. v. Salvucci, 448 U.S. 83 (1980) Defendant can only claim 4th amendment violation if defendant’s rights have been violated.
33. State v. Simmons, NOCOA09-268 **Unpublished.** Cigar guts not equal to drugs.
34. IL v. Wardlow, 528 U.S. 119 (2000) High crime area + unprovoked flight = RS to frisk. (Terry case.)
35. State v. Williams, 673 S.E.2d 394 (2009) Plain feel standard as P.C.

Misc Search and Seizure Stuff

1. Background of Search and Seizure by Bill Powers

KNOLL CASES

1. State v. Burns, NO.COA08-1181 **Unpublished.** State must provide a phone calls all #'s or breath test supervised.
2. State v. Eliason, 100 N.C. App. 313, 395 S.E.2d 702 (1990) Good explanation of the three cases considered in State v. Knoll; in this case it was found that defendant’s constitutional rights were not violated.
3. State v. Elson, No. COA98-125, affirmed by 130 N.C.App. 760 (1998) State’s burden to prove no violation if refusal or no chemical test.

4. State v. Ferguson, 90 N.C. App. 513, 369 S.E.2d 378 (1998) Case should be dismissed when a defendant is denied access to a potential witness after the witness arrived in a timely fashion and made a reasonable effort to gain access to the defendant.
5. State v. Gilbert, 85 N.C. App. 594; 355 S.E.2d 261 (1987) Need to show prejudice if the breath tests result is .08 or above to get relief.
6. State v. Haas, 131 N.C. App. 113, 505 S.E.2d 311(1998) Defendant needs to show prejudice. Bad case.
7. State v. Ham, 105 N.C. App. 658, 414 S.E.2d 577 (1992) Defendant needs to show prejudice. Here a one hour delay was not prejudicial.
8. State v. Hatley, 661 S.E.2d 43 (2008) Knoll violated; but defendant also must show prejudice.
9. State v. Hayes, 188 N.C. App. 313 (2008) Knoll violated, defendant must also show prejudice.
10. State v. Hill, 277 N.C. App. 547 (1971) Refusal of the jailer to permit the defendant's attorney to see him is inherently prejudicial. (Knoll is based on this case.)
11. State v. Labinski, 654 S.E.2d 740 (2008) Defendant must show prejudice in order to be successful in arguing a Knoll violation.
12. State v. Myers, 118 N.C. App. 452, 455 S.E.2d 492 (1995) The defendant unequivocally asked that his wife be permitted to observe the taking of the breathalyzer test. Officer made a statement that "that might not be a good idea." Officer had no right to refuse that request and so charges must be dismissed.
13. State v. Knoll, 322 N.C. App. 535 (1988) Delay in releasing a defendant from custody after being charged with DWI can cause irrevocable prejudice, justifying dismissal of case.

Misc Knoll Stuff

1. State v. Rao (Memorandum of Law by Marcus on Knoll)
2. State v. Tuckett (Memo of Law) When cops deny witness' access to FSTs, they violate Knoll.
3. Memorandum of law #2 on Knoll by Marcus.

MISC. CASES

1. State v. Absher, Unpublished. Destruction of Video Evidence.
2. State v. Allen, 359 N.C. 425 (2005) Adopts Blakely and Apprendi. Jury decides punishment beyond reasonable doubt.
3. State v. Alston, 88 N.J. 211 (1981) Constructive possession of gun not imputed to passenger.
4. State v. Apprendi, 731 A. 2d 485 (1999) Aggravating factors must be proven to jury beyond a reasonable doubt.
5. State v. Barron, NO. COA09-770 Constructive possession. Not enough to just be in the room.
6. State v. Bartlett, 130 N.C. App. 79 (1998) Alka-sensor not admissible- if not sure controlled substance, can't seize.
7. WA v. Blakely, 542 U.S. 296 (2004) Apprendi adopted.
8. State v. Blocker Boykin allowed
9. Boykin v. AL, 395 U.S. 238, 23 L.Ed (1969) AF's.
10. State v. Bordeaux, NO. COA09-1484 Confession involuntarily even after Miranda.
11. Brady v. MD, 373 U.S. 83, 83 S.Ct. 1194 (1963) DA must disclose all potentially exculpatory info.
12. State v. Brennan, NO. COA09-1362 Melendez-Diaz one expert can't test another's opinion.
13. State v. Buchanan, 355 N.C. 264, 559 S.E.2d 785(2002) See also State v. Buchanan 543 S.E.2d 823 (2001). The test for arrest is whether reasonable person in defendant's place would have believed in custody, not officers subjective intent.
14. State v. Buckner, 34 N.C. App. 447, 238 S.E.2d 635(1977) 30 minute wait required if defendant exercises right to witness.
15. State v. Burrow NO.COA11-773 M-D, officer can't testify re-pills, need lab analyst.

16. Smith v. Cain, 565 U.S. ___ (Jan. 10, 2011) Great Brady case. specifically, "Boatner's testimony was the only evidence linking Smith to the crime. Also, Boatner's undisclosed statements directly contradicted his testimony. Boatner's undisclosed statements, the Court concluded, were plainly material."
17. State v. Cao, 175 N.C. App. 434, 626 S.E.2d 301 (2006) Crawford-records ok if only objective facts, no opinions. (Before Melendez-Diaz)
18. State v. Carrouthers, NO. COA-1470 Handcuffs are not necessarily custody. Bad case!
19. State v. Catoe, 78 N.C. App. 167, 336 S.E.2d 691(1985) Extrapolation evidence ok sometimes.
20. State v. Clark, 12 Ired. 151, 1851 WL 1154 N.C. (1851) Expert witness.
21. State v. Coffey, 658 S.E.2d 73 (2008) Indef. extension of revocation for no 508 is GAF.
22. State v. Cooke, 270 N.C. 644, 155 S.E.2d 165 (1967) Blood test case-drunk at time of accident is all that is relevant.
23. State v. Cothran, 463 S.E.2d 423(1995) Bad case; .08 is enough.
24. Crawford v. Washington, 124 S.Ct. 1354,158 L.Ed. 177 (2004) Defendant has the right to confront witnesses against him (Melendez-Diaz based on this case).
25. WA v. Davis, 547 U.S. 813 (2006) Definition of testimonial: statements made to cops where primary purpose is to meet emergency needs are not testimonial (here 911 call).
26. State v. Davis, 142 N.C. App. 81, 542 S.E.2d 236(2001) Refusal and blood test admissible.
27. State v. Delaney, 613 S.E.2d 699 (2005) Expert may use info from other experts to opine.
28. State v. Fletcher, 688 S.E.2d 94 (2010) Blood draw w/out warrant ok if exigent circumstances. Bad case.
29. State v. Fowler, 676 S.E.2d 523 (2009) 2006 DWI statute/procedure reviewed and okayed. (Sorry Bill!)
30. ND v. Gill, 755 N.W.2d 454 (2008) Community caretaking exception not applicable in a dwelling.
31. State v. Hairr, 244 N.C. 506 (1956) Insufficient for a 20-138 conviction for the court to show that a def drove an auto on a highway within the state when he has drunk a sufficient quantity of intoxicating liquor to affect however slightly his mental or physical faculties. Must show loss of normal control and appreciable impairment.

32. State of Florida v. Harris, Dog Sniff is not necessarily pc.
33. State v. Hatley, 661 S.E.2d 43 (2008) Witness arrives on time and not allowed to be witness-not to suppress intox result allowed.
34. State v. Hensley, 190 N.C. App. 600 (2008) Possession of alcohol-need evidence of what was in the bottle.
35. U.S. v. Herring, 129 S.Ct. 695 (2009) Exclusion not always warranted by evidence mix up.
36. OH v. Homan, 89 Ohio St. 3d 421 (2000) FST's require strict compliance.
37. Howerton v. Helmet, LTD, 581 S.E.2d 816 (2003) Standards for experts-not Daubert!
38. State v. Hudgins, 606 S.E.2d 443(2005) Necessity defense.
39. State v. Jenkins, 527 S.E.2d 672 (2000) DV-pretrial release case.
40. State v. Joe, NO.COA10-1037-2 Affidavit not necessary though found in S/C. FOF required in order suppressing evidence in S/C.
41. U.S. v. Johnson, 410 F.3d 137 (2005) Community caretaking exception to warrant requirement.
42. State v. Lawson, 285 N.C. 320, 204 S.E.2d 843(1974) Miranda upheld: statement excluded.
43. Lee v. Gore, NO. COA09-370-2Refusal must be willful and affidavit must be correct to support suspension. Affirmed by Supremes.
44. State v. Lewis, 603 S.E.2d 559 (2004) Crawford case
45. State v. Lloyd, 33 N.C. App. 370, 235 S.E.2d 281(1977) 30 min wait not necc. unless defendant exercises rights to witness.
46. State v. Madry, 140 NC App 600 (2000) Warrant must allege all facts necessary.
47. State v. Matias, 556 S.E.2d 269 (2001) Constructive possession (diff. from Weems.)
48. MA v. Melendez-Diaz, 129 S.Ct. 2527 (2009) Right to confrontation extends to lab techs.
49. State v. McBride, 109 NCApp 64 (1993) When can court use other charge as agg. factor.
50. Kyles v. Whitley, 514 US 419 (1995) Brady Revised.

51. State v. McKown, 236 Ill.2d 278 (2010) HGN unless some alcohol not an amount.
52. State v. Messick, NO. COA090-940
53. State v. Moore, 513 S.E.2d 346 (1999) Positive test for drugs not equal to impaired.
54. State v. Morgan, 362 N.C. 686 (2008) DWI pre-2006 amendments-State's appeal
rights limited.
55. Atkins v. Moye, 277 N.C. 179 (1970) Odor (of alcohol) standing alone is no evidence that he is under influence of an intoxicant and the mere fact that he has had a drink will not support such a finding.
56. State v. Myers, 118 N.C. App. 452, 455 S.E.2d 492(1995) When defendant requests
witness, state must allow.
57. State v. Narron, 666 S.E.2d 860 (2008) Per se rule .08 not an irrefutable presumption.
58. State v. Oates, __ N.C. App. __, __ S.E.2d __ (June 21, 2011)
(<http://appellate.nccourts.org/opinions/?c=2&pdf=MjAxMS8xMC03MjUtMS5wZGY=>).
The State failed to give proper notice of appeal from the trial court's order granting the defendant's motion to suppress. The State filed written notice of appeal after the trial judge granted the defendant's motion in open court but before the trial court entered the written order. Although judgment occurs when the sentence is pronounced, entry of an order occurs when it is reduced to writing, signed by the trial court, and filed with the clerk. The State failed to file written notice of appeal within 14 days after entry of the court's order.
59. State v. Palmer, 676 S.E.2d 559 (2009) Post 2006 procedure in State's appeal of DWI
pretrial motions.
60. State v. Perry, NO. COA03-1419 Search warrant does not allow search of all people
present.
61. State v. Rivens, 679 S.E.2d 145 (2009) LEO's have right to approach residence and
ask questions.
62. Robinson v. Seaboard System Railroad, Inc., 87 N.C. App. 512, 361 S.E.2d 909(1987)
Expert witness needs some knowledge. (See Howerton)
63. State v. Rogers, 124 N.C. App. 364 (1996) Alka-sensor procedure-anything ok. Bad
case.

64. State v. Shockley, NO. COA09-241 Insufficient sample does not impede consecutive tests.
65. State v. Shuping, 213 N.C. 421, 323 S.E.2d 350 (1984) .10 is enough.
66. State v. Smith, 262 N.C. 472, 137 S.E.2d 819 (1964) In RDO, warrant must allege the cops duty and what defendant did to resist.
67. State v. Speight, 186 N.C. App. 93 (2007) Adapts Blakely- errors not ever harmless.

Today the NC Supreme court quietly rejected the state's latest attempt to get the NC courts to adopt the good faith exception to the exclusionary rule for violations of Article I, Section 20 of the NC Constitution. The NCSC did so by denying the state's PDR in State v. Shaylon Monquice Springs, No. 106P12. Please forgive this long post. In light of some listserv questions a few months ago, I think it's important that we all know where the law stands on this issue.

Historical background: In United States v. Leon, 468 U.S. 897, 82 L.Ed.2d 677 (1984), the US Supreme Court adopted a good faith exception to the exclusionary rule for violations of the US Constitution. In State v. Carter, 322 N.C. 709 370 S.E.2d 553 (1988), the NCSC decided not to create a good faith exception for the exclusion of evidence obtained from violations of Article I, Section 20 of the NC Constitution or of NC statutes. In 2011 NC Sess. Laws 6, the General Assembly amended NC Gen. Stat. §15A-974 to overrule a portion of Carter, establishing a good faith exception only for evidence obtained from violations of NC statutes. The legislature did not - and could not - overrule Carter for evidence obtained from violations of Article I, Section 20 of the NC Constitution. However, the session law asked the NCSC to overrule Carter with respect to violations of Article I, Section 20 of the NC Constitution.

State v. Springs: A Hickory police officer responded to a report of an incident, approached a group of men, and asked for their IDs. Mr. Springs gave the officer an ID card. The officer called the ID in to the Hickory PD and was told that there was an outstanding arrest warrant for Mr. Springs. Mr. Springs told the officer that the warrant had already been served on him, that the charge had been resolved, and that he had gotten out of jail on the charge. Mr. Springs tried to flee, but the officer handcuffed him and arrested him on the basis of the allegedly outstanding warrant. Cocaine and marijuana were found on the ground where Mr. Springs had been handcuffed. When the officer arrived at the police station, he checked the online database and learned that Mr. Springs was right: the arrest warrant had been served, Mr. Springs had pled guilty to that charge and been put on probation, and he had been released from jail on that charge. As a matter of law, then, the warrant had been recalled. See NC Gen. Stat. §15A-301(g)(3). Mr. Springs was charged with possession of cocaine and marijuana.

Rachael LeClair of Hickory filed a suppression motion. Rachael argued that (1) Carter is still effective, and (2) even if Carter had been overruled, the good faith exception would not apply in this case because of systemic negligence by the Hickory PD in failing to maintain an effective system to find out if criminal process had been served or recalled. The arresting officer

testified that he wasn't aware of any system for the courts to notify the Hickory PD when a warrant has been served or recalled. He testified that the Hickory PD has an officer who checks on warrants "every week or so." In short, there was not evidence that the Hickory PD uses the readily accessible, statewide, computerized databases to find out if a warrant has been served or recalled. Judge Robert C. Ervin granted the suppression motion. He wrote that he was not sure whether Carter was still effective, but that he would follow Carter because the NCSC had not expressly overruled it. The state appealed to the COA. I represented Mr. Springs in the COA. I made the same arguments that Rachael had made. In a unanimous, unpublished decision, the COA ruled that Carter was still good law. State v. Springs, No. COA11-799 (Feb. 21, 2012). The state filed a PDR, and today the NCSC denied the PDR.

Although none of the three courts involved in this case ever addressed our argument that the Hickory PD was guilty of systemic negligence for failing to maintain an effective, computerized system to keep track of arrest warrants and other criminal process, I believe that this argument was crucial in convincing the COA to affirm Judge Ervin's order and in convincing the NC Supreme Court to deny the state's PDR. I think they realized that even if they wanted to overrule Carter, this would have been a bad case to do so in light of the evidence of bad faith.

Lessons: (1) Carter is still good law for evidence obtained from violations of Article I, Section 20 of the NC Constitution. (2) If the state tries to argue for a good faith exception in a suppression hearing for evidence obtained from a violation of Article I, Section 20, you should argue that Carter is still good law, cite the COA's unpublished decision in Springs, and try to show that the good faith exception would not apply to your case anyway. Ben Dowling-Sendor

68. State v. Springs, NOCOA11-799 (2012) Still no good faith exception to NC exclusionary rule.
69. Steinkrause v. Tatum, 695 S.E.2d 451 (2010) Refusal needs to be willful.
70. State v. Sturgill, 158 N.C. App. 745 (1996) Police promise is contract.
71. State v. Summers, 351 N.C. 620 (2000) Collateral estoppel between DMV hearing and criminal trial. (See also Brower v. Killens)
72. State v. Sutton, 359 N.C. App. 642 (2005) Crawford case.
73. State v. Tate, 265 S.E.2d 223 (1980) Preliminary drug test not admissible.
74. Taylor v. Abernethy, 149 N.C. App. 263, 560 S.E.2d 233(2002) When is expert witness admissible.
75. State v. Taylor, 165 N.C. App. 750 (2004) Expert evidence ok (but see concur).
76. State v. Teeter, 361 N.C. 107, 637 S.E.2d 536 (2006) Expert witness not admissible on

speeding case; can only testify about speed if saw vehicle in motion.

77. State v. Thompson, 349 N.C. 483 (1998) DV pretrial detention case-State must have hearing 1st thing.
78. State v. Thompson, 154 N.C. App. 194, 571 S.E.2d 673(2002) Intox rights orally and in writing.
79. State v. Verdicanno, 137 N.C.App. 589 (2000) Blood test 3 hours later not at a relevant time.
80. State v. Washington, 668 S.E.2d 622 (2008) When do police have PC to stop and ask for ID?
81. State v. White Def of consecutive tests.
82. State v. Williams, NO COA09-493 Only use for PBT=presence of alcohol.
83. State v. Wimbish, 555 S.E.2d 329 (2001) Apprendi adopted.

WRECK CASES (INCLUDES BLOOD TEST CASES)

1. Atkins v. Moye, N.C. 106, 161 S.E.2d 568 (1970) Need more than odor or drinking.
2. State v. Cox, ___ N.C.App. ___, No. COA11-609-2 (August 07, 2012) corpus delicti needs evidence of opportunity or other corroborative evidence.
3. State v. Cruz, 173 N.C. App. 689, 620 S.E.2d 251 (2005) Refines Trexler; also-GAF child must be found by jury.
4. State v. Hairr, 244 N.C. 506 (1956) Drinking ok- need intoxicated.
5. Milton v. Shaffer, 126 N.C. App. 197 (1994)Blood test chain of custody.
6. State v. Patterson, NO. COA10-538 (2011) Reduces impact of Verdicanno.
7. State v. Ray, 54 N.C. App. 473 (1981) Trexler case.
8. Robinson v. Ins. Co., 255 N.C. 669 (1961) Blood test before any other substance injected.

9. State v. Scott, 146 N.C. App. 283 (2001) Need more than slurred speech to prove impaired.
10. State v. Trexler, 316 N.C. App. 528 (1986) Corpus delecti rule; a defendant's admission to an element of crime is not enough to prove that element.

Misc Wreck Stuff

1. Paul Glover Testimony Hospital Blood Test objections

MISC STUFF FOLDER

1. Alco-Sensor FST owner's manual, Alco-Sensor III owner's manual
2. PBT reqs
3. IOG article on passing
4. Robinson outline on DWI motions
5. Challenging the blood test for alcohol
6. Problems with drug testing in DWI
7. Cellular Respiration and Fermentation
8. Effects of Hyperthermia on Breath-Alcohol Analysis
9. Variables Affecting the Accuracy and Precision of Breath Alcohol Instruments
10. Core Body Temperature and its Effect on Breath Alcohol Management
11. IOG: Procedures in DWI post Fowler
12. NC DA's Association list of cases
13. FST's and validation
14. HGN Guide from NHTSA Accuracy and Precision of Breath-Alcohol Measurements for a Random Subject in the Postabsorptive State
15. Forced Blood Draw Order and Subpoena
16. Grossly Aggravating Factors (list by MH)
17. Memo from Farb on Crawford/Apprendi-Farb says DWI AF and GAF must be alleged in indict and proven to jury except prior convictions.
18. Motion to Suppress
19. Melendez-Diaz motions/letters/etc.