

## Search & Seizure (Traffic Stop)

### Officers Had Reasonable Suspicion to Stop Vehicle Based on Confidential Informant's Information

*State v. Crowell*, \_\_\_ N.C. App. \_\_\_, \_\_\_ S.E.2d \_\_\_ (1 June 2010).

A confidential informant phoned an officer that a black male with cocaine would arrive in a few minutes in a black Lexus SUV at a carwash on Highway 301 in Benson. The informant said he had seen the cocaine. The officer had known the informant for thirteen years and knew his mother and other family members. A month before this phone call, the informant had provided the officer with reliable information about illegal drug activity that resulted in an arrest. Fifteen minutes after the phone call, a black Lexus SUV pulled into the carwash and parked. The informant was also at the carwash, and he called the officer to confirm the black Lexus SUV was the correct one and the defendant was the driver. Officers stopped the vehicle after it left the carwash. The court ruled that the officers had reasonable suspicion to stop the vehicle based on the confidential informant's information. The court noted that the informant's basis of knowledge was not an essential factor under the totality of circumstances test for determining reasonable suspicion (or probable cause). The informant's information correctly predicted the defendant's future actions, including his mode of transportation, destination, and time of arrival. This information, corroborated by the officers, sufficiently demonstrated that the informant had inside knowledge about the defendant, giving them a basis for believing that the rest

#### **(1) Anonymous Information Was Insufficient Evidence to Support Reasonable Suspicion to Stop Vehicle**

#### **(2) Knowledge That Registered Owner's Driver's License Was Suspended Was Sufficient Evidence to Support Reasonable Suspicion to Stop Vehicle**

#### **(3) Ruling in *Arizona v. Gant* Applied Retroactively to Require Suppression of Evidence Seized Pursuant to Search of Vehicle Incident to Arrest of Driver for Driving While License Suspended**

*State v. Johnson*, \_\_\_ N.C. App. \_\_\_, \_\_\_ S.E.2d \_\_\_ (1 June 2010).

An anonymous caller at 12:14 p.m. reported that a black male wearing a white t-shirt and blue shorts was selling illegal drugs and guns at the corner of Pitts and Birch streets in the Happy Hill Garden community. The caller said the sales were occurring out of a blue Mitsubishi with a license plate of WT 3456. The caller refused to provide a name, and officers could not contact the caller. The officers did not know how the caller obtained his or her information. The caller telephoned again at 12:32 p.m. and stated that the suspect had just left the area, but would return shortly. Officers were stationed at the only two entrance points to the community. They saw a blue Mitsubishi with a license plate of WT 3453 being driven by a black male wearing a white t-shirt. An officer entered the license plate information into his computer, which revealed that the vehicle was registered to a Kelvin Johnson, black male, date of birth as August 5, 1964. It also showed that Johnson's driver's license was suspended. Officers stopped the vehicle, arrested the defendant for driving while license revoked, placed him in the back of a patrol car, and searched the defendant's vehicle incident to his arrest. (1) The court ruled, relying on *State v. Hughes*, 353 N.C. 200 (2000), and

State v. Peele, \_\_\_ N.C. App. \_\_\_, 675 S.E.2d 682 (2009), that the anonymous information was insufficient evidence to support reasonable suspicion to stop the defendant's vehicle. The court stated that when an anonymous tip forms the basis for a traffic stop, the tip itself must exhibit sufficient indices of reliability, or it must be buttressed by sufficient law enforcement corroboration. The court examined the facts and concluded that neither ground was satisfied. (2) The court ruled that even though the anonymous tip did not support the vehicle stop, the officers had reasonable suspicion to stop the vehicle based on their knowledge that the registered owner's driver's license was suspended. [Author's note: Although not cited by the court, see State v. Hess, 185 N.C. App. 530 (2007) (when officer ran vehicle's registration plate and then registered owner's driver's license, which was reported to be suspended, officer had reasonable suspicion to stop vehicle when there was no evidence that owner was not driving vehicle). (3) The court ruled that the ruling in Arizona v. Gant, 129 S. Ct. 1710 (2009) (Court ruled that officers may search vehicle incident to arrest only if (i) arrestee is unsecured and within reaching distance of passenger compartment when search is conducted; or (ii) it is reasonable to believe that evidence relevant to crime of arrest might be found in vehicle), applied retroactively to the defendant's case because it was on direct appeal and not yet final. And the search incident to arrest of the defendant's vehicle violated the Fourth Amendment because it did not satisfy the *Gant* ruling.

### **Discovery of Odor of Marijuana from Spare Tire in Luggage Area of Chevrolet Suburban Provided Probable Cause to Make Warrantless Search for More Marijuana in Rest of Vehicle, Including Second Spare Tire in Undercarriage of Vehicle**

*State v. Toledo*, \_\_\_ N.C. App. \_\_\_, \_\_\_ S.E.2d \_\_\_ (18 May 2010).

An officer noted the odor of marijuana from a spare tire in the luggage area of a Chevrolet Suburban after the defendant had validly consented to a search of the vehicle. The officer had conducted a "ping" test, pressing the tire valve to release some of the air, and noted a very strong odor of marijuana. The officer arrested the defendant for possession of marijuana. The officer then warrantlessly searched a second spare tire located in the undercarriage of the vehicle and noted the odor of marijuana after conducting a ping test. Marijuana was found in both spare tires. At issue was the validity of the search of the second spare tire. The court ruled, relying on *United States v. Ross*, 456 U.S. 798 (1982), that the officer had probable cause to make a warrantless search for more marijuana in the rest of the vehicle, which included the second spare tire. [Author's note: The court in footnote four appeared to suggest a separate justification for the search of the vehicle, including the spare tire in the undercarriage, under *Arizona v. Gant*, 129 S. Ct. 1710 (2009) (court ruled that officers may search vehicle incident to arrest only if (1) arrestee is unsecured and within reaching distance of passenger compartment when search is conducted; or (2) it is reasonable to believe that evidence relevant to crime of arrest might be found in vehicle), because it was reasonable to believe that the vehicle contained evidence of the crime of arrest, possession of marijuana.]

### **Officer Had Reasonable Suspicion to Stop Vehicle**

*State v. McRae*, \_\_\_ N.C. App. \_\_\_, 691 S.E.2d 56 (6 April 2010).

The court ruled that an officer A had reasonable suspicion to stop a vehicle for two independent reasons. First, the officer A had the authority to stop the vehicle because the officer had reasonable suspicion that the defendant had committed a violation of G.S. 20-154(a) by failing to use his turn signal when he pulled off the highway into a gas station parking lot. There was medium traffic and the defendant's vehicle was a short distance in front of the officer. The court relied on *State v. Styles*, 362 N.C. 412 (2008), and distinguished *State v. Ivey*, 360 N.C. 562 (2006). Second, the officer also had the authority to stop the vehicle based on an confidential informant's tip to another officer (officer B) that had been broadcast to officer A and other officers before the stop, as follows: be on the lookout for a black male driving a green Grand Am with Pembroke city limits. The informant has worked with officer B on several occasions and had provided reliable information in the past that led to the arrest of drug offenders. The informant identified the driver by name, a name that officer B recognized as someone associated with the drug trade. The informant also described the specific car (a green Grand Am) and advised the officer that the defendant would be driving the car within the city limits of Pembroke with 60 grams of cocaine in his possession.

#### **Court Rules That Roadside Strip Search of Vehicle Occupant in Daylight Hours Violated Fourth Amendment**

*State v. Battle*, \_\_\_ N.C. App. \_\_\_, 688 S.E.2d 805 (16 February 2010).

Officers received a tip from a confidential informant that three named people were going to Durham to obtain cocaine and then transport it back to Granville County, exiting at the Linden Avenue exit off Interstate 95. The officers stopped the vehicle shortly after exiting there. It was daylight (a summer day around 5:00 p.m.). Two male passengers were searched and no illegal drugs were found. The third passenger, a female, was strip searched by a female officer between the open doors of the vehicle at the roadside, which included pulling her underwear out from her body and discovering a folded five dollar bill and a crack pipe. (1) The opinion for the court, which was not joined by the two other judges on the three-judge panel, noted that for purposes of this appeal, it was assumed that the officers had probable cause to arrest the defendant and search her incident to arrest. However, the opinion stated that for a roadside strip search to be constitutional, there must be both probable cause and exigent circumstances to show some significant government or public interest would be endangered were law enforcement officers to wait until they could conduct the search in a more discreet location, usually at a private location within a law enforcement facility. The opinion, which extensively discussed the facts and case law from North Carolina and other jurisdictions, ruled that the strip search violated the defendant's Fourth Amendment rights. The opinion stated that the trial court's order denying the defendant's motion to suppress did not show that there were exigent circumstances justifying any search more intrusive than that allowed incident to any arrest. (2) A second judge on the three-judge panel concurred only in the result (granting the defendant's motion to suppress) without an opinion. (3) A third judge on the three-judge panel concurred with an opinion that noted the North Carolina Supreme Court in *State v. Stone*, 362 N.C. 50 (2007) (defendant's general consent to search did not include officer's flashlight search of genitals inside defendant's underwear), had ruled that an officer's search with at least questionable consent was not permissible under the Fourth

Amendment. And because the search in *Battle* without the defendant's consent was more intrusive than that in *Stone*, it was not permissible under the Fourth Amendment. [Author's note: Although a majority of the three-judge panel agreed that the strip search violated the Fourth Amendment, there was not majority agreement why the search violated the Fourth Amendment.]

### **Officer's Smell of Marijuana Odor Emanating From Vehicle Authorized Warrantless Search of Vehicle**

*State v. Corpening*, \_\_\_ N.C. App. \_\_\_, 683 S.E.2d 457 (6 October 2009).

The defendant approached a checkpoint in his vehicle, pulled over, and parked on the side of the road about 100 to 200 feet before the checkpoint. He sat alone in the vehicle for about thirty to forty-five seconds. An officer walked to the vehicle and smelled a marijuana odor emanating from it. The court ruled that the officer's "plain smell" of the marijuana provided probable cause to conduct a warrantless search of the vehicle. The court also ruled that the defendant's argument that the checkpoint was unconstitutional was irrelevant because the defendant stopped solely on his own volition (that is, the defendant was not seized under the Fourth Amendment). Also, the officer did not conduct a seizure by simply approaching the vehicle to investigate.

#### **(1) Officer Did Not Have Authority Under *Arizona v. Gant* to Conduct Search of Vehicle Incident to Arrest of Defendant for Traffic Violations**

#### **(2) Officer Did Not Have Authority to Seize and Search Torn Papers on Vehicle's Passenger Seat Under Plain View Doctrine**

*State v. Carter*, \_\_\_ N.C. App. \_\_\_, 682 S.E.2d 416 (15 September 2009).

An officer noticed that a vehicle's temporary tag was old or worn and with an obscured expiration date. He stopped the vehicle, which was being driven by the defendant. The officer saw several whole pieces of paper lying on the passenger seat and noticed the defendant seemed unusually nervous. The officer investigated the vehicle's registration and then arrested the defendant for an expired registration tag and failing to notify the Division of Motor Vehicles of a change of address. The defendant was removed from the vehicle, handcuffed, and directed to sit on a curb while the vehicle was searched. The officer noticed that the whole pieces of paper had been ripped into smaller pieces. He placed the pieces together and discovered incriminating evidence that led to the defendant's guilty plea to several offenses, while reserving the right to appeal the trial court's order denying his motion to suppress the paper evidence. (1) The court ruled that the officer's search of the vehicle incident to the defendant's arrest violated the Fourth Amendment under the ruling in *Arizona v. Gant*, 129 S. Ct. 1710 (2009). [Author's note: For an analysis of *Gant*, see the online paper available at <http://www.sog.unc.edu/programs/crimlaw/arizonagantbyfarb.pdf>.] First, the defendant was not within the reaching distance or otherwise able to access the passenger compartment when the search began. He had been arrested, handcuffed, and was sitting on the curb. Second, there was no evidence that the papers were related to the offenses for which he had been arrested. (2) The court ruled that the officer's seizure and search of the papers were not justified under the plain view doctrine because it was not immediately apparent that the papers were evidence of a crime or contraband. [Author's note: The term "immediately

apparent” is synonymous with probable cause. See note 44 on page 99 of *Arrest, Search, and Investigation in North Carolina* (3d ed. 2003).

**(1) Passenger in Stopped Vehicle May Challenge Duration of Seizure**  
**(2) Passenger Was Illegally Seized When Traffic Stop Had Ended, Driver’s License and Registration Had Not Been Returned to Driver, and Officers Did Not Have Reasonable Suspicion to Further Detain Driver and Passengers**

*State v. Jackson*, \_\_\_ N.C. App. \_\_\_, 681 S.E.2d 492 (18 August 2009).

An officer stopped a vehicle and with other officers checked the driver’s license and registration of the driver and determined that they were valid and there were no outstanding warrants for the driver and two passengers, one of whom was the defendant. After the traffic stop had ended but before the driver’s license and registration had been returned, an officer asked questions about illegal drugs and weapons in the vehicle and then asked for consent to search the vehicle, which was granted. Cocaine was found in the vehicle, the three occupants were arrested, and cocaine was found in the defendant’s sock at the jail. The court ruled, relying on *Brendlin v. California*, 551 U.S. 249 (2007), that the defendant was seized during the stop of the vehicle and could challenge the duration of the seizure as violating the Fourth Amendment. The court also ruled that once the traffic stop had ended and the driver’s license and registration had not been returned, the officer’s questioning about illegal drugs and weapons in the vehicle was an extension of the seizure beyond the scope of the original traffic stop, and reasonable suspicion did not exist to justify the extension of the seizure. The court rejected the argument that the encounter had become consensual after the traffic stop had ended, because a reasonable person under the circumstances would not believe he was free to leave without his driver’s license and registration. The vehicle search was tainted by the illegality of the extended detention. Because the defendant was arrested based on the discovery of cocaine and a weapon in the vehicle, the cocaine found in the defendant’s sock at the jail was the direct result of the officer’s illegal search of the vehicle. Thus, the exclusionary rule prohibited the admission of the evidence found in the vehicle and the defendant’s sock.

**Officer Did Not Violate Fourth Amendment When Stopping Vehicle in Which Person Who Had Been Reported Missing by His Parents Was an Occupant**

*State v. Wade*, \_\_\_ N.C. App. \_\_\_, 679 S.E.2d 484 (21 July 2009).

A police department issued a “be on the lookout” alert for the owner of a green Saturn bearing a specific license plate number and registered to a named twenty-six-year-old white male whose photo had been distributed to the department’s officers. He had been reported missing by his parents, who did not know where he was and believed that he was in danger. An officer saw the green Saturn with the license plate number. He saw a black male driving it, a white female in the front passenger seat, and a white male in a rear passenger seat. Another officer pulled behind the car and stopped it. Later events resulted in the driver, the defendant, being charged with a drug offense. The court ruled that the stop of the vehicle did not violate the Fourth Amendment. The court stated that having received the missing person report, it was perfectly appropriate that the officers temporarily prevent the Saturn from being driven off, detain the occupants, and make sure that the missing person was not in any danger of harm. The mere fact

that the officers did not observe the missing person to have sustained personal harm or that he was under direct physical restraint when he exited the vehicle did not make further investigative activities inappropriate, given the parents' concern that he might have been at risk of harm or consorting with people involved with illegal drugs.

### **Officer's Encounter with Vehicle Passenger Constituted Seizure Under Fourth Amendment—Ruling of Court of Appeals Is Affirmed in Part and Reversed in Part**

*State v. Icard*, 363 N.C. 303, 677 S.E.2d 822 (18 June 2009), affirming in part and reversing in part, 190 N.C. App. 76 (2008).

At approximately 12:30 a.m., an officer noticed a vehicle parked in the parking lot of a food store in a high crime area known for prostitution and drug-related activity. The officer saw a person behind the steering wheel. The officer parked directly behind the vehicle in which the defendant was a passenger, with his blue lights flashing. The officer, who was in uniform and armed, told the driver in the defendant's presence that the two were being checked out because the area was known for drugs and prostitution. The officer requested from the driver his driver's license and registration and asked for and received the driver's explanation why they were there. After the officer requested law enforcement assistance, another officer arrived in a marked police car and used his take-down lights to illuminate the defendant's side of the vehicle. Both officers then approached the defendant. When the defendant twice failed to respond to one of the officer's attempts to initiate a conversation, the officer opened the defendant's door and made contact with her. The officer requested that the defendant produce her identification, then asked the defendant to come with her purse to the rear of the vehicle where he and the other officer continued to ask questions. When one officer left the defendant to deal with the driver, he did not return her purse but instead handed it to the other officer. The court ruled that the encounter with the defendant constituted a seizure under the Fourth Amendment. The court stated, citing *Florida v. Bostick*, 501 U.S. 429 (1991), that a reasonable person in the defendant's position would have believed she was not free to leave or otherwise terminate the encounter.

#### **1) Search and Seizure--Investigatory search--Reasonable suspicion**

*State v Stone*, 179 N. C. APP. 297 (2006)

The trial court did not err in a possession with intent to sell or deliver cocaine case by concluding that an officer seized the occupants of the pertinent vehicle when he pulled behind the vehicle and that the officer did not violate defendant's constitutional rights by asking defendant to step out of the vehicle, because: 1) whether the officer seized the occupants of the vehicle when he pulled behind them or when he approached the vehicle, he had reasonable suspicion of two traffic violations and lawfully conducted a brief detention of the occupants of the vehicle; 2) the officer was justified in asking defendant to step out of the vehicle during the lawful stop of the vehicle; and 3) the officer had reasonable suspicion of criminal activity since the officer saw defendant moving from

side to side inside the vehicle and also recognized defendant as someone who had been identified to police as a drug dealer.

## **2) Search and Seizure--Exceeding scope of consent--Inspecting defendant's genitals**

*State v Stone, 179 N. C. APP. 297 (2006)*

An officer's search exceeded the scope of defendant's consent, and defendant is entitled to a new trial on charges of possession with intent to sell or deliver cocaine, because: 1) the officer inspected defendant's genitals after he simply obtained general consent to search defendant's person; 2) given the scope of the officer's first search of defendant, a reasonable person would not have expected the second search to entail such an intrusive genital inspection; 3) the fact that defendant did not expressly limit the scope of the second search does not make the second search reasonable; 4) defendant's reaction demonstrated that he could not reasonably have expected the excessive scope of the officer's second search; 5) the officer's testimony demonstrated that he did not have any reason to suspect that defendant was concealing weapons or contraband near his genitals, and the officer had already conducted a full search of defendant's person which had not uncovered any weapons or contraband when he conducted an inspection of defendant's genitals; 6) the officer's discovery of cash in defendant's pocket, while suspicious, did not authorize the officer to proceed with such an intrusive search; 7) the trial court did not make any findings that the two officers attempted to shield defendant's genitals from view; and 8) a reasonable person would not have expected police to pull his pants away from his body and expose his genitals in a parking lot of an apartment complex even if the encounter with police occurred in the early morning hours.

## **Search and Seizure--Warrantless search--Smell of Marij.--Motion to suppress drugs**

*State v Carpenter, 179 N. C. APP. 79 (2006)*

The trial court did not err in a possession with intent to sell and deliver cocaine and possession with intent to sell and deliver marijuana case by denying defendant's motion to suppress the drugs found on his person after the car he was riding in as a passenger was stopped, because: 1) although defendant contends the trial court did not hold a hearing to consider his motion to suppress, the record reflects a hearing was held on 21 February 2005 and that the trial court entered a detailed order containing findings of fact and conclusions of law; 2) the officer properly stopped the motor vehicle for traveling left of the center line; 3) when an officer detects the smell of marijuana emanating from a vehicle, the officer has probable

cause for a warrantless search of the vehicle for drugs; (4) where there are reasonable grounds to order an occupant out of the car, then he may be subjected to a limited search for weapons when the facts available to the officer justify the belief that such an action is appropriate; (5) the officer felt the canister containing crack cocaine in the course of patting down defendant for weapons after making a valid stop and smelling a strong odor of marijuana; and 6) based on his experience, the officer believed the rattling canister contained contraband, defendant was placed under arrest upon the discovery that the canister contained what appeared to be crack cocaine, and an officer may search the individual incident to the arrest whereupon he found a bag of marijuana in defendant's shoe.

### **Search and Seizure--Motion to suppress--Checkpoint--Reasonable Articulable suspicion--Investigatory stop**

*State v. Bowden, 177 N. C. APP. 718 (2006)*

The trial court did not err in a habitual driving while impaired and driving with a revoked license case by denying defendant's motion to suppress all evidence obtained as a result of an officer's encounter with defendant, because: 1) even though the trial court failed to make findings of fact in connection with the denial of the motion to suppress, defendant did not present any evidence of his own and no apparent conflict arose from the State's evidence which was comprised solely of the officer's testimony; 2) defendant did not argue the pertinent checkpoint was unconstitutional, and thus, the trial court had no reason to address the issue and it will not be addressed for the first time on appeal; 3) whether the checkpoint complied with N.C.G.S. § 20-16.3A is immaterial when the checkpoint was a driver's license and registration checkpoint and not an impaired driving checkpoint; and 4) assuming arguendo that an investigatory stop occurred, the totality of circumstances justified the officer's pursuing and stopping defendant's vehicle to inquire as to why he turned away prior to the checkpoint including the late hour, the sudden braking of the truck when defendant crested the hill and could see the checkpoint, the abruptness of defendant's turn into the nearest apartment complex parking lot, and defendant's behavior in first backing the truck into one space, pulling out and proceeding toward the parking lot exit, and then reparking when he spotted the patrol car approaching him.

### **Search and Seizure--Lawful detention--Use of drug--Sniffing dog around exterior of vehicle**

*State v. Branch, 177 N. C. APP. 104 (2006).*

Once the lawfulness of a person's detention is established, including to verify driving privileges at a license checkpoint or a stop for a traffic

violation, officers need no additional assessment under the Fourth Amendment before walking a drug-sniffing dog around the exterior of that individual's vehicle.

**Search and Seizure-Vehicle--Motion to suppress--Drugs--Objective reasonableness test destruction of his vehicle exceeded scope of consent**

*State v. Johnson, 177 N. C. APP. 122 (2006).*

The trial court erred in a trafficking in cocaine, conspiracy, possession with intent to sell and deliver cocaine, and possession of drug paraphernalia case by denying defendant's motion to suppress evidence seized pursuant to a search of his vehicle where a plastic wall panel was removed by a law enforcement officer from the interior of defendant's van, thereby facilitating discovery of cocaine, because: 1) applying the test of objective reasonableness, neither the officer nor defendant could reasonably have interpreted defendant's general statement of consent to include the intentional infliction of damage to the vehicle; 2) although an individual consenting to a vehicle search should expect that search to be thorough, he need not anticipate that the search will involve the destruction of his vehicle, its parts or contents; 3) unless an individual specifically consents to police conduct that exceeds the reasonable bounds of a general statement of consent, that portion of the search is impermissible; 4) the trial court's findings do not address, nor does the testimony of the officer reveal, the presence of probable cause necessary to extend the scope of the instant search beyond the limitation of reasonableness; 5) save for the search itself, no evidence nor any finding of fact suggested the officer suspected the van contained contraband or that defendant was involved in any criminal conduct; 6) taking the presence of inappropriate or out of place glue as the totality of the circumstances, that solitary factor standing alone was wholly inadequate and insufficient to establish probable cause justifying search beyond the reasonable scope of defendant's consent; and 7) the alterations to the vehicle must be such that an officer may reasonably believe a crime is being committed, and the officer must go beyond the inarticulable hunch that all customized vehicles contain hidden compartments and point to specific factors which justify the objectively reasonable conclusion that particular alterations indicate a hidden compartment which may contain contraband.

**Officer Did Not Have Probable Cause to Stop Vehicle for Perceived Traffic Violation: Failing to Signal When Making a Turn, G.S. 20-154(a)**

*State v. Ivey, 360 NC 562 (2006)*

A law enforcement officer stopped a vehicle driven by the defendant after

observing that the defendant completely stopped at a stop sign at an intersection, and then made a right turn without using a turn signal. The defendant consented to a search of his vehicle, a firearm was found, and the defendant was convicted of possession of a firearm by felon and carrying a concealed weapon. The court ruled, relying on the standard of probable cause set out in *Whren v. United States*, 517 U.S. 806 (1996), that the officer did not have probable cause to stop the vehicle for a perceived traffic violation, specifically G.S. 20-154(a). The evidence did not indicate that any vehicle or pedestrian was, or might have been, affected by the turn, including the officer's vehicle which was some distance behind the defendant's vehicle. Because the officer's search of the vehicle arose from the unconstitutional stop, all evidence seized during the search should have been excluded by the trial judge, and it was therefore error to deny the defendant's suppression motion. \*\*\*Bad case \*\*\* Wrong standard used P/C instead of Reasonable Suspicion

### **1) Search and Seizure--Traffic stop--Motion to suppress--Probable cause**

*State v Baublitz, 172 N. C. APP. 801 (2005)*

The trial court did not err in a possession of a controlled substance case by denying defendant's motion to suppress the evidence obtained from his vehicle during the search even though defendant contends the officer lacked reasonable and articulable suspicion, because: 1) the probable cause standard applies when the officer observed defendant's vehicle twice cross the center line of the highway in violation of N.C.G.S. § 20-146(a); 2) an officer's subjective motivation for stopping a vehicle is irrelevant as to whether there are other objective criteria justifying the stop; and 3) the fact that the officer did not issue defendant a ticket was irrelevant since the officer's objective observation of defendant's vehicle twice crossing the center line provided the officer with probable cause for the stop regardless of his subjective motivation.

### **2) Search and Seizure--Traffic stop--Motion to suppress--Scope of consent**

*State v Baublitz, 172 N. C. APP. 801 (2005)*

The trial court did not err in a possession of a controlled substance case by denying defendant's motion to suppress the evidence obtained from his vehicle during the search even though defendant contends the search of his vehicle that yielded the cocaine exceeded the scope of his consent to a search, because: 1) defendant placed no explicit time limit on his consent to the search, nor did he attempt to revoke his consent at any time; 2) only a few minutes lapsed between the time the officer conducted the initial search and when he recovered the cocaine; 3) the officer was not

prohibited from momentarily interrupting his search of defendant's vehicle; and 4) even if defendant had not consented to the search, the officer would have been authorized to search defendant's vehicle based on the automobile exception to the warrant requirement.

**1) Search and Seizure--Terry stop--Motion to suppress--Probable cause--  
Detention of passenger of car**

*State v. Brewington, 170 N. C. APP. 264 (2005)*

The trial court did not err in an assault on a governmental officer with a deadly weapon and reckless driving case by denying defendant passenger's motion to suppress evidence of an alleged unlawful stop and detention by a police officer on 10 September 2002, because: 1) the trial court properly concluded that there was probable cause to stop the vehicle when the officer observed that the driver was not wearing a seatbelt in violation of N.C.G.S. § 20-135.2A(a); 2) although defendant had not been observed violating any laws at the time of the stop, it is not unreasonable under the Fourth Amendment of the United States Constitution to detain a passenger when a vehicle has been stopped due to a traffic violation committed by the driver of the car; 3) once the original purpose of the stop had been addressed, the trial court correctly determined that there was a reasonable articulable suspicion to require defendant to remain at the scene when defendant's behavior, combined with the discovery of narcotics on the driver during a consensual pat-down search, created a reasonable articulable suspicion which permitted the officer to detain defendant passenger to address the deputy's concerns; and (4) the police had probable cause to search the car based upon the discovery of illegal narcotics upon the driver's person, and even assuming the deputy did not have any authority to detain defendant at the scene, he possessed authority to detain the car at the scene.

**2) Search and Seizure--Checkpoint stop--Motion to suppress evidence--  
Sufficiency of findings of fact--Primary programmatic purpose--  
Reasonableness of checkpoint**

*State v. Rose, 170 N. C. APP. 284 (2005)*

The trial court erred in a possession with intent to manufacture, sell, and deliver marijuana, felony manufacturing marijuana, possession of drug paraphernalia, and possession of a firearm by a convicted felon case by denying defendant's motion to suppress evidence uncovered during a checkpoint stop based on the trial court's erroneous consideration of the constitutionality of the checkpoint, and the case is remanded for further findings of fact because: 1) the trial court failed to make findings of fact regarding the primary programmatic purpose of the checkpoint as

required by *City of Indianapolis v. Edmond*, 531 U.S. 32 (2000); 2) even if the checkpoint was for a permissible programmatic purpose such as checking licenses and registrations, the trial court failed to conduct the separate analysis of the reasonableness of the checkpoint as mandated by *Illinois v. Lidster*, 540 U.S. 419 (2004), including the gravity of the public concerns served by the seizure, the degree to which the seizure advances the public interest, and the severity of the interference with individual liberty; and 3) the evidence would permit the trial court to find that there was no plan, no time frame, no supervision, and no direction from anyone (oral or written) about how to conduct these wholly spontaneous checkpoints. See Farb p. 24

### **1) Search and Seizure--Car stop--Frisk--Protection of officer--Totality of circumstances**

*State v. Shearin*, 170 N. C. APP. 222 (2005)

Under the totality of the circumstances, it is reasonable for a police officer at a traffic stop to suspect that a person is armed and dangerous when that person appears agitated, is reluctant to answer when asked if he is armed, refuses to be searched, and flees rather than submit to a search. The officer's search of defendant in this case was a reasonable means of protecting himself, and defendant's motion to suppress the resulting evidence was correctly denied.

### **2) Search and Seizure--Detention at traffic stop--Protection of officer**

*State v. Shearin*, 170 N. C. APP. 222 (2005)

It was reasonable for an officer to require a passenger to remain in a vehicle during a lawful traffic stop where the totality of the evidence demonstrated that the officer was taking precautions for his own safety. The trial court correctly denied defendant's motion to dismiss evidence subsequently discovered.

### **3) Search and Seizure--Expanded traffic stop--Probable cause and reasonable suspicion**

*State v. Hernandez*, 170 N. C. APP. 299 (2005)

Defendant was not subjected to an unlawful seizure where a Highway Patrol Trooper saw him remove his seat belt while the vehicle was moving; stopped defendant to issue a citation; expanded the detention based on defendant's nervousness in the patrol car, his inconsistent

answers to questions, and the officer's observation of a strong scent of air freshener in defendant's car; and cocaine was eventually found in defendant's car. The evidence supported the finding of an observed seat belt violation, which supported the conclusion that the Trooper had probable cause to stop the vehicle, and specific articulable facts supported the expansion of the detention.

### **Search and Seizure--Investigative stop--Motion to suppress evidence-- Reasonable suspicion of criminal activity**

*State v. Campbell 359 NC 644 (2005)*

The trial court did not err in a capital first-degree murder case by denying defendant's motion to suppress all evidence discovered after he was stopped by police in Aiken, South Carolina even though defendant contends he was seized within the meaning of the Fourth Amendment before his arrest for operating a motor vehicle while his license was suspended, because: 1) officers do not violate the Fourth Amendment's prohibition of unreasonable seizures merely by approaching individuals on the street or in other public places and putting questions to them if they are willing to listen, and in the instant case the officer had not told defendant that he could not leave when defendant consented to speak with the officer; and 2) at the point where the officer asked defendant to "hold up" while she transmitted information about defendant to the dispatcher, the officer had reasonable articulable suspicion that defendant was involved in criminal activity including where the officer received a complaint from a K-Mart employee about a suspicious person whose car was parked for a lengthy period of time in the parking lot; defendant acknowledged that he had been parked in the lot; defendant said he had completed a job in Columbia, South Carolina, that he was traveling home to North Carolina, and that he had stopped in Aiken to take a nap even though Aiken is forty-five miles west of Columbia, is not on the route to North Carolina, and the K-Mart was more than ten miles from the interstate connecting Columbia and Aiken; and defendant had no driver's license with him and did not know the name of his friend to whom the car belonged.

### **Search and Seizure--Investigatory stop--Drugs--Motion to suppress--Pat down**

*State v. Downing, 169 N. C. APP. 790 (2005)*

The trial court did not err in a trafficking in cocaine by possession and transportation case by denying defendant's motion to suppress evidence obtained from the search of his motor vehicle, because: 1) officers had a reasonable articulable suspicion that defendant was involved in illegal

activity at the time they made the investigatory vehicle stop; 2) the police lawfully stopped a vehicle fitting a description given by a reliable confidential informant, lawfully entered and moved the vehicle with defendant's consent, and smelled cocaine upon entering the vehicle; 3) an officer does not need to obtain a warrant or have probable cause to enter a vehicle if the owner of the vehicle gives consent; 4) a search warrant is not required before a lawful search based on probable cause of a motor vehicle in a public roadway or in a public vehicular area may take place; 5) plain smell of drugs by an officer is evidence to conclude there is probable cause for a search; and 6) although defendant contends the pat down of his person violated his constitutional rights, this argument is irrelevant when neither the pat down nor the evidence of marijuana found on defendant's person factored into the legality of the vehicular stop, entry and movement of the vehicle, and search of the vehicle leading to the cocaine charges.

### **Searches and Seizures--Traffic stop--Speed of vehicle--Personal observation of officer--Probable cause**

*State v. Barnhill, 166 N. C. APP. 228 (2004)*

The trial court erred by suppressing DWI evidence seized as a result of a speeding stop on the grounds that the officer had no speed detection device nor training in estimating speed and could not articulate objective criteria on which to base his opinion of the vehicles' speed. The officer had an unobstructed view of the vehicle and ample opportunity to observe its progress, and his observation of its speed, the sound of its racing engine, and the car bouncing as it passed through an intersection furnished a sufficient blend of circumstances to establish a fair probability that defendant was speeding.

### **1) Search and Seizure--Motion to suppress--Probable cause--Reasonable suspicion--Confidential informant**

*State v. Leach, 166 N. C. APP. 711 (2004)*

The trial court did not commit plain error in a trafficking in cocaine by possession and transportation, possession of a firearm by a felon, and felony speeding to elude arrest case by denying defendant's motion to suppress evidence of cocaine that defendant abandoned while running from the police after a high speed chase, because: 1) the police were alerted to a drug sale by an informant who had previously given information that led to an arrest and the confiscation of multiple kilograms of cocaine, and the officers reasonably relied on information provided by the informant which

provided probable cause to stop and search defendant; and 2) the officers did not seize defendant until they actually detained him at the conclusion of a high speed chase since no seizure occurs until defendant is physically restrained.

## **2) Search and Seizure--Investigatory stop--Motion to suppress evidence--Trafficking in OxyContin**

*State v. Sutton, 167 N. C. APP. 242 (2004)*

The trial court did not err in a trafficking by sale or delivery of OxyContin case by denying defendant's motion to suppress evidence obtained during an investigatory stop of defendant's motorcycle in the parking lot of a drug store, because: 1) the stop was based on the tip of a pharmacist as well as the officer's own observations; and 2) the pharmacist's information combined with the officer's own observations provided reasonable suspicion that criminal activity was afoot justifying a Terry stop.

## **Walking Drug Dog Around Vehicle While Driver Was Lawfully Detained for Officer's Issuance of Warning Ticket for Speeding Did Not Violate Fourth Amendment**

*Illinois v. Caballes, US Supreme Court*

The defendant was lawfully stopped for speeding. While the stopping officer was writing a warning ticket, another officer arrived and walked a drug detection dog around the defendant's vehicle. The dog alerted to the trunk and a search discovered marijuana. The entire incident lasted less than ten minutes. The Court stated that the issue in this case was a narrow one: whether the Fourth Amendment requires reasonable, articulable suspicion to justify using a drug detection dog to sniff a vehicle during a legitimate traffic stop. The Court noted that a seizure justified solely by the interest in issuing a warning ticket can become unlawful if it is prolonged beyond the time reasonably required to complete that mission. The Court stated that the state court had reviewed the stopping officer's conversations with the defendant and the precise timing of his radio transmissions to the dispatcher to determine whether the officer had improperly extended the duration of the stop to enable the dog sniff to occur. The Court accepted the state court's conclusion that the duration of the stop in this case was entirely justified by the traffic offense and the ordinary inquiries incident to such a stop. The Court noted that the state appellate court had ruled, however, that the use of the drug detection dog converted the encounter from a lawful traffic stop into a drug investigation, and because the shift in purpose was not supported by

reasonable suspicion that the defendant possessed illegal drugs, it violated the Fourth Amendment. The Court rejected this analysis and ruling. It stated that conducting a dog sniff would not change the character of a traffic stop that is lawful at its inception and otherwise conducted in a reasonable manner, unless the dog sniff itself violated the defendant's Fourth Amendment right to privacy. The Court ruled that the dog sniff did not do so, relying on *United States v. Jacobsen*, 466 U.S. 109 (1984), *United States v. Place*, 462 U.S. 696 (1983), and *City of Indianapolis v. Edmond*, 531 U.S. 32 (2000), and distinguishing *Kyllo v. United States*, 533 U.S. 27 (2001). The Court stated that a dog sniff conducted during a lawful traffic stop that reveals no information other than the location of a substance that a person had no right to possess does not violate the Fourth Amendment. [Author's note: 1) This ruling directly affects the analysis and ruling in *State v. Branch*, 162 N.C. App. 707, 591 S.E.2d 923 (17 February 2004) (an officer violated the Fourth Amendment by walking a drug dog around a vehicle whose driver was lawfully detained for an investigation of her driver's license, because the use of the drug dog required reasonable suspicion of criminal activity beyond the reason of investigating the driver's license), petition for discretionary review and petition for writ of supersedeas granted, 358 N.C. 236, 595 S.E.2d 438 (1 April 2004). 2) The United States Supreme Court in *City of Indianapolis v. Edmond*, 531 U.S. 32 (2000), ruled that a checkpoint whose primary purpose was drug detection violated the Fourth Amendment. The Caballes ruling did not change the Edmond ruling. For example, if officers walked a drug dog around all vehicles initially stopped at a DWI or license checkpoint (in contrast to walking a drug dog around a car after the driver had been lawfully detained at the checkpoint for further investigation for a valid reason), then a court would likely rule that the primary purpose of the checkpoint was drug detection, not DWI or license checks. 3) The detention in Caballes took about ten minutes. Absent the driver's consent to remain at the location of the traffic stop or an officer's reasonable suspicion of criminal activity to justify a further detention, the duration of a typical traffic stop would likely become unconstitutionally long if the driver was detained solely because the officer was waiting for a drug dog to arrive and the officer had already completed the necessary actions related to the traffic stop.]

### **1) Search and Seizure--Investigatory stop--Motion to suppress**

*State v. Blackstock*, 165 N. C. APP. 50 (2004)

The trial court did not err in a first-degree murder and robbery with a dangerous weapon case by denying defendant's motion to suppress evidence seized by law enforcement officers during the 17 April 2000 investigative stop of an automobile in which defendant was a passenger,

because: 1) defendant's arguments point to nothing more than inconsistencies and discrepancies in the evidence, the resolution of which was for the trial court; and 2) while a single one of the factors relied upon by law enforcement officers and cited by the trial court might not in itself have been sufficient to sustain a reasonable suspicion that criminal conduct was underway, the composite of the factors as detailed in the trial court's findings of fact adequately sustained a reasonable and articulable suspicion that criminal activity was afoot.

## **2) Search and Seizure--DWI stop--Trooper's reason not credible**

*State v. Villeda, 165 N. C. APP. 431 (2004)*

The trial court's finding that the DWI stop of a Hispanic male was unjustified and constituted an unreasonable search and seizure was supported by findings and evidence from an Internal Affairs investigation that the trooper's stated reason for the stop was not credible.

## **Search and Seizure--Investigatory stop of vehicle--Protective search--Motion to suppress**

*State v. Edwards, 164 N. C. APP. 130 (2004)*

The trial court did not err in a case arising out of multiple sexual assaults by denying defendant's motion to suppress evidence seized during a warrantless search of his vehicle, because: 1) the trial court made ample findings of fact upon which to conclude that based on the totality of circumstances, the officers were warranted in making an investigatory stop of defendant's vehicle, and given the actions of defendant and the details of the circumstances, the officers were warranted in checking defendant and his immediate surroundings for evidence of a crime; 2) defendant was already under surveillance, and activity at an unusual hour is a factor that may be considered by a law enforcement officer in formulating reasonable suspicion; 3) defendant's vehicle had an expired Illinois registration plate, which was sufficient in and of itself to warrant initially stopping defendant; 4) a protective search of the vehicle was justified based on the facts that the officers saw defendant reach under his car seat and then exit the vehicle with what appeared to be something in his hand, defendant repeatedly refused to comply with the officers' orders, and the officers heard on the alert tone that the victim's assailant had a handgun; and 5) despite the fact that defendant was handcuffed and sitting on the curb when the handgun was found, defendant was still in close proximity to the interior of the vehicle, and the possibility of him gaining immediate control of the handgun while handcuffed or once the handcuffs were removed was still present. The trial court did not err by denying defendant's motion to dismiss the short-form indictments that charged

him with first-degree rape and first-degree sexual offense, because the short-form indictments have been constitutionally upheld for use with these type of offenses.

**Ruling in New York v. Belton, 453 U.S. 454 (1981), Allows Officer to Search Vehicle's Passenger Compartment Incident to Arrest of Recent Occupant of Vehicle**

*Thornton v. United States, May 24, 2004,*

An officer became suspicious about a vehicle driving near him and ran a check that revealed its license tags had not been issued to that vehicle. Before the officer had an opportunity to stop the vehicle, the defendant drove into a parking lot and got out of the vehicle. The officer pulled into the parking lot and stopped the defendant near his vehicle. He eventually developed probable cause to arrest him for possessing illegal drugs in one of his pockets. The officer handcuffed him and placed him in the back seat of his patrol car. He then searched the defendant's vehicle and found a handgun under the driver's seat. The Court ruled that its ruling in *New York v. Belton*, 453 U.S. 454, 101 S. Ct. 2860, 69 L. Ed. 2d 768 (1981) (officer who has made lawful custodial arrest of occupant of vehicle may search entire passenger compartment incident to arrest), allowed the officer to search the vehicle's passenger compartment incident to the arrest of the defendant, who was a recent occupant of the vehicle.

**1) Search and Seizure--Traffic stop--Reasonable suspicion**

*State v. Jacobs, 162 N. C. APP. 251 (2004)*

A traffic stop was justified by reasonable suspicion, and the trial court correctly denied defendant's motion to suppress controlled substances seized in the subsequent search, where defendant's vehicle was slowly weaving within in its lane, touching the lane markers on each side, at 1:43 a.m.

**2) Search and Seizure--Investigatory detention--Length reasonable**

*State v. Jacobs, 162 N. C. APP. 251 (2004)*

An investigatory detention following a traffic stop did not continue for an unreasonable time, and the trial court correctly denied defendant's motion to suppress controlled substances seized during the detention, where the officer was suspicious prior to the stop that defendant might be impaired, might be a murder suspect or have knowledge of the suspect, and might be involved in narcotics trafficking; defendant's responses to the officer's

questions did not fully resolve the suspicions; and defendant was very nervous.

### **3) Search and Seizure--Request for consent to search--Reasonable suspicion not required**

*State v. Jacobs, 162 N. C. APP. 251 (2004)*

Reasonable suspicion is not required for an officer to request consent for a search. Furthermore, the search of this defendant's car (which led to the discovery of Ecstasy on defendant) is not tainted by unlawful detention and there is no showing that defendant's consent was not voluntary.

### **Search and Seizure--Motion to suppress drugs--License and registration checkpoint--Dog sniff**

*State v. Branch, 162 N. C. APP. 707 (2004) Illinois v Caballes effectively overturning this decision*

The trial court erred in a misdemeanor possession of marijuana and felony possession of cocaine case by denying defendant's motion to suppress evidence of the drugs found in a search at a license and registration checkpoint, because: 1) an officer's prior knowledge and present observations were not sufficient to justify a dog sniff and search of defendant's car, but were merely enough to justify the license check; 2) once the officers stopped defendant and she had given them her valid license and registration, some further particularized suspicion was necessary to justify a longer detention; 3) a reasonable and articulable suspicion is required before a dog sniff is valid even though it is not a search; and 4) the time needed to verify defendant's credentials is not a time during which officers may investigate any possible criminal activity while the defendant is immobilized. But see US Sup. Ct. case Illinois v Caballes effectively overturning this decision

### **Search and Seizure--Traffic stop--Motion to suppress evidence--Delayed reaction at traffic light**

*State v. Roberson, 163 N. C. APP. 129 (2004)*

The trial court did not err in a driving while under the influence case by allowing defendant's motion to suppress evidence obtained during a traffic stop, because: 1) defendant's eight-to-ten-second delayed reaction to a traffic light did not give rise to a reasonable articulable suspicion that criminal activity may be afoot; 2) there was nothing suspicious about defendant's driving and thus no indication that she may have been under the influence of alcohol; 3) the fact that the officer's observation of

defendant gave rise to no more than an unparticularized suspicion or hunch cannot be rehabilitated by adding the general statistics advocated by the State on time, location, and special events from which a law enforcement officer would draw his inferences based on his training and experience; and 4) the State failed to raise at trial the issue of the community caretaking function carried out by law enforcement.

### **1) Search and Seizure--Warrantless search--Standard of review for informant information**

*State v. Nixon, 160 N. C. APP. 31 (2003)*

The trial court did not err in a possession with intent to sell and distribute marijuana, possession of cocaine, and carrying a concealed weapon case by denying defendant's motion to suppress evidence seized under a warrantless search of defendant's person and vehicle based on an informant's tip, because: 1) the standard for determining whether probable cause existed to conduct a warrantless search of defendant's person and vehicle is basically the same for both a confidential informant and an anonymous tip, although some corroboration of the information or greater level of detail is generally necessary for an anonymous tip; and 2) the trial court made careful and thorough findings of fact, and properly scrutinized the situation under the totality of circumstances test to determine basis of knowledge and reliability or veracity of the information as a basis for probable cause.

### **2) Search and Seizure--Warrantless search--Informant information passed through several officers**

*State v. Nixon, 160 N. C. APP. 31 (2003)*

The trial court did not err in a possession with intent to sell and distribute marijuana, possession of cocaine, and carrying a concealed weapon case by concluding that there was probable cause to support the warrantless search of defendant's vehicle and defendant's subsequent arrest based on information from an informant passed from a first officer through several officers, because: 1) the probable cause of the first officer was established through the testimony before the trial court of the officer who received information from the informant; and 2) once the arresting officer corroborated the description of defendant and his presence at the named location, that officer had reasonable grounds to believe a felony was being committed in his presence which in turn created probable cause to stop and search defendant.

### **1) Search and Seizure--Warrantless search of vehicle--Motion to suppress drugs--Informant tip**

*State v. Collins, 160 N. C. APP. 310 (2003)*

The trial court did not err in a trafficking in cocaine case by denying defendant's motion to suppress the drugs obtained by the police when they conducted a warrantless search of defendant's vehicle based on an informant's tip, because: 1) the police were able to verify that defendant was the alleged perpetrator and establish probable cause to justify the warrantless stop and search of defendant's vehicle based on the informant's description of the vehicle, description of defendant, and provision of the location and approximate time of the alleged activity; 2) the informant was a reliable informant and his information was reasonably corroborated by other matters within the officer's knowledge; and 3) the informant gave the police sufficient information to establish probable cause for the eventual warrantless arrest of defendant.

**2) Evidence--Traffic stop--Marijuana discovered--Acquittal of traffic offense--Not admissible**

*State v. Reynolds, 161 N. C. APP. 144 (2003)*

A marijuana defendant arrested after a traffic stop was not entitled to present evidence of his acquittals on the traffic violations. The court made specific findings to support its conclusion that the officer had an independent, reasonable, and articulable basis for the traffic stop, and evidence of acquittal is not determinative to finding probable cause for the stop.

**Search and Seizure--Consent by car owner--Jacket found in car--Motion to suppress evidence**

*State v. Jones, 161 N. C. APP. 615 (2003)*

The trial court did not err in a trafficking in cocaine by possession, possession with intent to sell or deliver cocaine, possession of marijuana, possession of drug paraphernalia, carrying a concealed weapon, and possession of a firearm by a convicted felon case by denying defendant's motion to suppress the evidence found inside his leather coat that he placed in a car in which the owner subsequently consented to its search, because: 1) the car owner's general consent to the search of his car reasonably included the search of clothing lying on the seats of the car; and 2) the car owner had the authority to consent to a search of his vehicle which encompassed items found lying around in the car such as defendant's jacket, and defendant had no reasonable expectation of privacy in the jacket.

**1) Arrest--Investigatory stop--Totality of circumstances--Late night, lonely**

## **road--Fleeing from officer**

*State v. Martinez, 158 N. C. APP. 105 (2003)*

The trial court correctly concluded that an investigatory stop was justified by a reasonable suspicion of criminal activity where the stop occurred around 2:00 a.m.; there were no vehicles on the road other than defendant's car and patrol vehicles; a man on foot had fled from an officer a few minutes before and about fifty yards from the vehicle; and the officer inferred a connection between the two. Cocaine was found in defendant's pocket.

## **2) Search and Seizure--Pat down--Nervous defendant--Object in pocket--No answer about weapons**

*State v. Martinez, 158 N. C. APP. 105 (2003)*

A pat down search and the subsequent arrest of defendant and seizure of cocaine, currency, and a weapon were justified where a nervous defendant who was reaching around inside his vehicle did not respond when asked if he had weapons; the officer then properly asked about an object in defendant's pocket; defendant's reply that the object was "dope" justified the seizure of currency and cocaine and defendant's arrest; and the search of defendant's vehicle and seizure of a weapon were incident to arrest.

## **Search and Seizure--Investigatory stop of vehicle--Anonymous tip--Motion to suppress cocaine**

*State v. McArn, 159 N. C. APP. 209 (2003)*

The trial court erred in a possession of cocaine case by denying defendant's motion to suppress cocaine discovered following a stop of his vehicle based on an anonymous tip received by police that the vehicle was involved in illegal drug sales, because: 1) although the anonymous tipster's providing of the location and description of the vehicle may have offered some limited indicia of reliability in that it assisted the police in identifying the vehicle the tipster referenced, the tipster never identified or in any way described an individual; and 2) the officer stopped defendant based solely on the anonymous tip, and the tip upon which the officer relied did not possess the indicia of reliability necessary to provide reasonable suspicion of criminal activity.

## **Search and Seizure--Traffic stop--Motion to suppress--Motion to dismiss--reasonable articulable suspicion**

*State v. Bell, 156 N. C. APP. 350 (2003)*

The trial court did not err in a possession of drug paraphernalia, possession with intent to sell and deliver cocaine, trafficking cocaine by possession, and trafficking of cocaine by transport case by denying defendant's motions to dismiss and to suppress evidence seized by officers in a rental vehicle registered in the name of defendant after the vehicle in which defendant was a passenger was stopped for speeding in a work zone, because: 1) both officers testified that defendant voluntarily consented to a search of the vehicle and that consent was never withdrawn; and 2) the officers had reasonable and articulable suspicion of possible criminal activity based on the stories of the two males in the car being directly in conflict, the back seat of the car being filled with personal belongings, defendant's resistance of eye contact, and the specific experience and training of the officers relating to drug cases. See Farb P. 24

### **Motor Vehicles--Search and Seizure--Stop and arrest--Random drivers license checkpoint**

*State v. Mitchell, 154 N. C. APP. 186 (2002)*

The trial court erred in an impaired driving case by granting defendant's motion to suppress evidence of his stop and arrest based on defendant's driving through a random drivers license checkpoint because even though there was no evidence of a written plan adopted by the pertinent police department relative to license checkpoints and the pertinent officer had standing permission to establish the checkpoint, the State met its burden of showing the random license check was not an unreasonable detention when uncontroverted evidence demonstrated that all westbound traffic on U.S. 29/74 was stopped and checked for licenses and registrations.

### **Search and Seizure—Cocaine--Voluntarily given to officers--Frisk following traffic stop**

*State v. McRae, 154 N. C. APP. 624 (2002)*

The trial court did not err by denying defendant's motion to suppress cocaine which he voluntarily gave to officers during the course of a constitutionally reasonable frisk following a traffic stop. Defendant was seen in a well known drug area at night participating in a drug transaction; he was stopped for speeding; officers discovered that his license tags were fictitious and that his driver's license had been revoked; defendant was nervous; and defendant repeatedly moved his hands in and out of his pockets despite being asked not to do so. The totality of these circumstances provided reasonable grounds to frisk defendant even though he was otherwise cooperative and presented no obvious signs of carrying a weapon.

**1) Search and Seizure--Traffic stop--Cocaine--Motion to suppress--Probable cause**

*State v. Wilson 155 N. C. APP. 89 (2002)*

The trial court did not commit plain error in a trafficking in cocaine case by denying defendants' pretrial motions to suppress all evidence obtained as a result of the search of the vehicle in which they were riding even though defendants contend it was a pretextual stop, because: 1) the officers had probable cause to stop defendants' vehicle since it was traveling behind another vehicle at a distance of less than one car length in violation of N.C.G.S. § 20-152(a) and at a speed of sixty-nine miles per hour; and 2) probable cause meant the stop was not pretextual and further investigation was unnecessary for purposes of issuing a warning ticket.

**2) Search and Seizure--Traffic stop--Cocaine--Motion to suppress--Reasonableness of length of detention**

*State v. Wilson 155 N. C. APP. 89 (2002)*

The trial court did not commit plain error in a trafficking in cocaine case by denying defendants' pretrial motions to suppress all evidence obtained as a result of the search of the vehicle in which they were riding even though defendants contend the detention of their vehicle was unreasonably long and violated their Fourth Amendment rights, because: 1) defendants were not initially stopped and detained by the officer for an unreasonably long period of time when the process took approximately seven to eight minutes and the officer's questions and actions were all reasonably related to the officer's underlying justification of issuing a warning ticket; and 2) the officer had reasonable suspicion to further detain defendants after the warning ticket was issued when the trained police officer with special knowledge in the area of illegal drugs knew defendant driver's actions were consistent with those of a drug trafficker.

**Evidence—Cocaine--Seizure from vehicle where defendant was passenger**

*State v. VanCamp, 150 N. C. APP. 347 (2002)*

The trial court did not err in a trafficking in cocaine case by admitting evidence of 30.7 grams of cocaine seized at a license checkpoint from the console of a vehicle in which defendant was a passenger, because: 1) defendant has no standing to challenge the search of the vehicle since he had no ownership or possessory interest therein; and 2) even if defendant did have standing, his constitutional

rights were not violated when all vehicles going through the checkpoint were stopped and the checkpoint was thus constitutional; an officer conducted a lawful frisk of defendant for weapons, discovered brass knuckles in defendant's pants pocket, and arrested defendant for carrying a concealed weapon; and the officer was justified in conducting a search incident to that arrest of the interior of the vehicle, including the console compartment.

### **Search and Seizure--Investigatory stop--Motion to suppress--Crack cocaine**

*State v. Summey, 150 N. C. APP. 662 (2002)*

The trial court did not err in a felony possession of cocaine case by denying defendant's motion to suppress evidence of crack cocaine seized after the stop of a truck in which defendant was a passenger based on the officers having sufficient cause to stop and search defendant, because: 1) the circumstances, including a truck matching the description relayed to the officers had just left a residence which had been in an area of prior drug activity and in front of the residence the driver of the truck had engaged in a course of conduct which was characteristic of a drug transaction, created a reasonable suspicion of criminal activity such that the officers were justified in conducting an investigatory stop of the truck; and 2) the circumstances justified a limited search of defendant, including forcing defendant to open her hand, since the truck which defendant occupied was reported to have just been involved in a suspected drug transaction, when the officers approached the truck defendant's hand was hidden in a suspicious manner underneath a piece of fabric, and defendant refused to open her hand when asked by the officers. See Farb P. 17

### **1) Arrest--Traffic stop--25 minute detention--Slow computer--Developing suspicion**

*State v. Castellon, 151 N. C. APP. 675 (2002)*

A traffic stop did not constitute an illegal seizure where defendant contended that a 25 minute detention for a warning ticket was unreasonable, but the officer developed a reasonable suspicion that criminal activity was afoot while he waited for his computer to function, he was justified in asking for permission to search the vehicle, and defendant voluntarily consented to the search.

### **2) Search and Seizure--Consent to search car--Packages seen inside television--Removal of television panel**

*State v. Castellon, 151 N. C. APP. 675 (2002)*

Officers did not exceed the scope of defendant's consent to search a car where they found a television set in the trunk, saw saran-wrapped packages through openings in the back of the television, and removed the back panel of the television. The officers discovered the packages inadvertently, recognized that they contained contraband, and were justified in opening the television and seizing the cocaine in the packages.

### **3) Search and Seizure--Investigatory stop--Based on tip**

*State v. Young, 148 N. C. APP. 462 (2002)*

An investigatory stop was justified based upon a reasonable suspicion that defendant was involved in robberies of a Western Union where an officer received a tip; the officer had previous knowledge of the circumstances of the robberies which allowed him to corroborate the information provided by the informant; and the officer observed that defendant generally met the description of the perpetrator provided by witnesses to the robberies.

### **4) Search and Seizure--Traffic stop--Permissible scope**

*State v. Young, 148 N. C. APP. 462 (2002)*

A traffic stop which eventually led to an armed robbery prosecution did not exceed its permissible scope where the officer did not request defendant's license and registration, defendant's behavior was not typical in that he came toward the patrol car quickly after the stop, defendant made a statement which the officer knew to be false, and the officer was aware that defendant could be an armed robbery suspect and that an anonymous caller had stated that defendant was armed and dangerous. At any rate, the evidence which defendant sought to suppress came from a consensual search of the vehicle rather than from the pat-down following the stop.

### **1) Search and Seizure--Driver's license checkpoint--Findings--Supported by evidence**

*State v. Tarlton, 146 N.C. App. 417, 2001*

The trial court did not err in an impaired driving prosecution by denying defendant's motion to suppress evidence obtained as a result of driver's license checkpoint where there was evidence to support the trial court's findings that the troopers were aware of the Highway Patrol policies for

driver's license checks, that they called a supervisor who gave them permission, that the roadblock was conducted with patrol vehicles with blue lights operating, and that they checked every vehicle in both directions except when they were writing citations.

## **2) Search and Seizure--Driver's license checkpoints--Requirements**

*State v. Tarlton, 146 N.C. App. 417, 2001*

There is no constitutional mandate requiring law enforcement officers to obtain permission from a supervising officer before conducting a driver's license checkpoint; furthermore, written guidelines are not required and the legislature did not intend for N.C.G.S. § 20-16.3A to apply to all license checks.

## **1) Search and Seizure--Traffic stop--Suspicion of revoked license--Reasonable**

*State v. Kincaid, 147 N. C. APP. 94 (2001)*

The trial court did not err by refusing to suppress marijuana seized from a vehicle where defendant contended that the seizure was the result of an illegal stop. The officer testified that he understood that defendant's license had been revoked, that he had never seen defendant drive an automobile in the two or three years he had known him, and that defendant had attempted to conceal his identity when he saw the officer. Although the officer's suspicion that defendant had a revoked license was incorrect, he had a reasonable suspicion based on articulated and specific facts. Under this combination of circumstances, the stop was legal.

## **2) Search and Seizure--Traffic stop--Initial grounds no longer valid--Voluntary additional questioning--No coercive action**

*State v. Kincaid, 147 N. C. APP. 94 (2001)*

The trial court did not err by refusing to suppress marijuana seized after a traffic stop which was based upon suspicion of driving with a revoked license where defendant contended that the officer no longer had grounds to detain defendant after the officer returned defendant's license and registration. While it is true that the initial reasonable suspicion evaporated, the officer was neither prohibited from asking if defendant would consent to additional questioning nor prohibited from questioning defendant after receiving his consent. There was no coercive action by the officer; he was the only officer present, he spoke to defendant in a regular tone of voice, even addressing him on a first-name basis, and defendant had been allowed to enter a near-by convenience store and buy a soft drink

during the license check.

### **3) Search and Seizure--Fourth Amendment seizure--Consensual encounter--Volunteered information**

*State v. Kincaid, 147 N. C. APP. 94 (2001)*

There was no Fourth Amendment seizure where an officer recognized defendant, stopped him on suspicion of driving with a revoked license, asked defendant if he could ask some questions after defendant's license proved valid, and defendant volunteered that there was marijuana in the car upon being asked for consent to a search of the car. There was only a consensual encounter from the time defendant consented to additional questioning until the officer began searching the car, and the volunteered information gave the officer probable cause to search the vehicle.

### **Search and Seizure--Investigatory stop—Scope--Show of force--Officers drawing weapons--Occupants of vehicle put in handcuffs**

*State v. Sanchez 147 N. C. APP.619 (2001)*

The trial court did not err in a trafficking in cocaine case by concluding that the officers' actions did not exceed the scope of an investigatory stop even though the officers made a show of force by drawing their weapons and placed the occupants of the vehicle in handcuffs, because: 1) the officers were justified in order to protect themselves when the suspect was considered armed and dangerous based on information provided by an informant; 2) the occupants of the vehicle were uncuffed and the officers put away their handguns once the officers ensured their safety; and 3) defendant's consent to the search of his briefcase was not a product of coercion and was voluntarily given.

### **Search and Seizure--Investigative stop--Object thrown from car--Defendant handcuffed during search for object--Probable cause**

*State v. Milien, 144 N.C. App. 335, 2001*

The trial court did not err by denying defendant's motion to suppress evidence resulting from an investigative stop where defendant was seen burying a plastic bag containing a rocky, off-white substance in the woods on 16 December; defendant dug up the plastic bag on 18 December immediately after being told that a drug dog would be brought to the woods; he left the area in his car and, upon realizing that he was being followed, sped up and threw a white plastic bag from the car; defendant stopped only when officers turned on their siren, not when they turned on

their blue light; officers did not formally arrest defendant but handcuffed him while searching for the bag; and defendant was arrested after the bag was found about 15 minutes later. Whether there was a de facto arrest or merely an investigatory detention, the facts and circumstances within the drug agents' knowledge and of which they had reasonably trustworthy information were sufficient to warrant the reasonable belief that defendant had committed or was committing an offense.

### **Search and Seizure--Traffic stop--Cocaine--Motion to suppress evidence**

*State v. Crenshaw, 144 N.C. App. 574, 2001*

The trial court did not err in a possession with intent to sell or deliver cocaine case under N.C.G.S. § 90-95(a)(1) by denying defendant's motion to suppress evidence seized during a traffic stop of his vehicle, because: 1) defendant's illegal parking in an area known for drug activity along with the inoperable taillight on his vehicle afforded the officers reasonable grounds to believe that criminal activity may be afoot, thus justifying a brief detention; 2) the duration of defendant's detention beyond his initial stop was not unreasonable; and 3) defendant failed to present evidence refuting the voluntariness of his consent to a search of his vehicle.

### **1) Search and Seizure--Trafficking in cocaine--Motion to suppress--Reasonable suspicion**

*State v. Munoz, 141 N.C. App. 675, 2001*

The trial court's finding that an officer had a reasonable suspicion to detain defendant after a traffic stop of defendant's truck which was transporting two cars was supported by the evidence, because: 1) the issue was whether a reasonable officer would be suspicious based upon the information known to him and not whether those circumstances would raise the suspicions of someone knowledgeable about the trucking industry; and 2) a trooper testified at the voir dire hearing that given fuel prices and the distance traveled, the \$ 200 flat fee amount per vehicle that defendant stated he was going to receive seemed suspicious.

### **2) Search and Seizure--Traffic stop--Delay in detention--Reasonable suspicion**

*State v. Munoz, 141 N.C. App. 675, 2001*

The trial court did not err by denying defendant's motion to suppress the evidence of cocaine obtained in the search of defendant's truck and the two cars being transported on the truck even though defendant contends it took only a few minutes to check defendant's driver's license and that

neither officer was able to explain the reason for the forty-five-minute delay, because the court's findings describe actions the officers took during the forty-five-minute period to confirm their reasonable suspicion, including checking the license, the fuel stickers, the EPIC system to see if there were any previous violations, and defendant's log book.

### **Search and Seizure--Investigatory stop--Anonymous informant--Insufficient indicia of reliability**

*State v. Hughes, 353 N.C. 200 2000*

The Court of Appeals erred by reversing the trial court's decision to grant defendant's motion to suppress evidence obtained during an investigatory stop of the taxi that defendant was riding in based on information the police received from an anonymous tip giving a physical description of a dark-skinned Jamaican whose name and clothing description could not be recalled, who was going to North Topsail Beach, who sometimes came to Jacksonville on weekends before dark, who sometimes took a taxi, who sometimes carried an overnight bag, and who might be arriving on the 5:30 p.m. bus, because: 1) the detective had never spoken with the informant and knew nothing about the informant other than the captain's claim that the informant was a confidential and reliable informant; 2) there was no indication that the informant had been previously used and had given accurate information or that his statement was against his penal interest; 3) there was no indicia of reliability when the only evidence showing that the identity of this informant was known is the captain's conclusory statement that the informant was confidential and reliable; 4) the information provided by the tip did not contain the range of details required to sufficiently predict defendant's specific future actions and could be associated with many travelers; and 5) the police did not have reasonable suspicion resulting from their subsequent corroboration.

### **1) Search and Seizure--Traffic stop--Officer in place or position to apprehend or warn**

*State v. Covington, 138 N.C. App. 688, 2000*

The trial court did not err in a driving while impaired case by denying defendant's motion to suppress all evidence obtained as a result of the stop of his vehicle, because: 1) two officers entered the area to investigate a reported breaking and entering; 2) one officer was positioned to apprehend the suspects or warn incoming residents of possible criminal activity; and 3) the officer stopped two vehicles, the second one being defendant's, in order to perform that very function.

### **2) Search and Seizure--Traffic stop--Impaired driving checkpoint not**

## **required**

*State v. Covington, 138 N.C. App. 688, 2000*

Although defendant contends an officer's stop of his vehicle was illegal based on an alleged failure to establish a valid checking station for impaired driving checks as required by N.C.G.S. § 20-16.3A, it was reasonable for an officer to briefly stop and detain defendant to ascertain defendant's identity and his possible involvement in criminal activity or to warn him as a resident, because: 1) the stop in this case did not arise pursuant to an impaired driving case, making this statute inapplicable; and 2) the stop of defendant's automobile was predicated on the fact that a break-in had been reported recently in the area, revealing that the stop was based on reasonable and articulable facts.

## **Search and Seizure--Motor vessel--Reasonable articulable suspicion**

*State v. Pike, 139 N.C. App. 96, 2000*

The trial court erred by finding that the stop of defendant's motor vessel violated the Fourth Amendment, requiring the evidence obtained from that stop to be suppressed and the charges of operating a motor vessel while impaired in violation of N.C.G.S. § 75A-10(b1)(2) to be dismissed, because a Wildlife Resource Commission officer could stop the motor vessel pursuant to N.C.G.S. § 75A-17(a) in order to conduct a safety inspection on the waters of North Carolina without having any reasonable, articulable suspicion of criminal activity to justify the stop based on the facts that: 1) it is necessary to stop vessels in order to do safety checks to insure compliance with statutory safety regulations; 2) defendant did not contend he lived on his boat in order to raise his expectation of privacy, nor did the officers ever board defendant's boat; 3) evidence of defendant's intoxication obtained by the officers was within plain view; and 4) the government's interest in maintaining water safety on its lakes and rivers substantially outweighed defendant's expectation of privacy in his boat.

## **Search and Seizure--Traffic stop--Consent to search car--Pat-down of person--Search incident to arrest**

*State v. Pulliam, 139 N.C. App. 437, 2000*

The trial court did not err by denying defendant's motion to suppress cocaine where the car in which he was a passenger was stopped at a traffic check point; the car was driven by a man known to officers to be a convicted drug trafficker, who claimed that he did not know defendant's name and who consented to a search of the car; defendant became belligerent when asked to leave the vehicle; he appeared intoxicated when

he finally left the vehicle; an officer saw a bulge in defendant's pocket about an inch wide and six inches long and conducted a pat-down search, discovering a utility razor knife; defendant was arrested for carrying a concealed weapon; and a search of defendant's person incident to the arrest produced a plastic baggie containing marijuana and cocaine.

### **Search and Seizure--Canine sniff of exterior of car--Illegal seizure**

*State v. Fisher, 141 N.C. App. 448, 2000*

The trial court did not err by suppressing evidence of marijuana found as a result of the warrantless search of defendant's vehicle by a canine sniff of the exterior of the car in a public place, because: 1) defendant was never arrested; 2) the officers were not justified in searching defendant's car based upon the issuance of a citation even if the officers may have had probable cause to arrest defendant; 3) the officers did not possess reasonable suspicion based upon objective facts to detain defendant for investigative measures outside the scope of the initial traffic stop; 4) the officers did not obtain any evidence which would justify extending defendant's detention beyond the time it took to investigate the initial traffic stop; and 5) the two factors that one officer knew that the area of the traffic stop was notorious for its drug trade and that defendant was previously involved in drug-related activity standing alone are insufficient to justify detaining an individual for the purpose of conducting a canine sniff or other limited investigative measure outside the scope of the initial stop.

### **1) Search and Seizure--Lawfully detained vehicle--Driver ordered to exit--- No unreasonable search and seizure**

*State v. Briggs, 140 N.C. App. 484, 2000*

A defendant's Fourth Amendment rights against unreasonable searches and seizures were not violated when an officer required him to exit his lawfully detained vehicle at a driver's license checkpoint in a high crime area because this procedure reduces the likelihood of assault on the officer and is not a serious intrusion upon the sanctity of the person.

### **2) Search and Seizure--Protective search--Pat down for weapons--Defendant outside his automobile**

*State v. Briggs, 140 N.C. App. 484, 2000*

An officer had reasonable suspicion to initiate a weapons pat down search of defendant at a driver's license checkpoint in a high crime area after the officer ordered defendant to exit his vehicle, because: 1) although a

routine traffic stop does not justify a protective search for weapons in every instance, once defendant is outside the automobile, an officer is permitted to conduct a limited pat down search for weapons if he has a reasonable suspicion based on articulable facts under the circumstances that defendant may be armed and dangerous; and 2) the totality of circumstances was sufficient to justify a pat down search of defendant's person when defendant was stopped in a high crime area, the hour was late, the officer was aware that defendant had been charged and convicted on more than one occasion for sale and delivery of cocaine and was then on probation for his most recent conviction, and the officer was aware that drug dealers frequently carry weapons.

### **3) Search and Seizure--Pat down search--Plain feel doctrine--Cigar holder--totality of circumstances--Incriminating nature of object**

*State v. Briggs ,140 N.C. App. 484, 2000*

An officer's seizure of a cigar holder from defendant's pocket while conducting a pat down search for weapons at a driver's license checkpoint in a high crime area after the officer ordered defendant to exit his vehicle was justified by probable cause under the plain feel doctrine based on the totality of circumstances, because: 1) the hour was late and defendant was stopped in a high crime area; 2) the officer had previously arrested defendant for possession of controlled substances and knew defendant was on probation for such an arrest at the time of the stop; 3) the officer smelled burned cigar in defendant's vehicle and on defendant, and was aware that burning cigars were commonly used to mask the smell of illegal substances; 4) defendant had previously stated he did not smoke cigars; 5) defendant's eyes were red and glassy, and his behavior suggested possible usage of a controlled substance; and 6) the officer's experience made him aware that cigar holders were commonly used to store controlled substances.

### **Search and Seizure--Investigatory stop--Reasonable articulable suspicion**

*State v. Parker, 137 N.C. App. 590 2000*

The trial court did not err in a trafficking in cocaine case by denying defendant's motion to suppress items seized during the search of her automobile, because the detectives had a reasonable articulable suspicion to conduct an investigatory stop of defendant's vehicle since: 1) the cumulation of information received by the detectives throughout their investigation led them to believe a "stash house" for drugs was located at 206 Wind Road; 2) within minutes of setting up surveillance of that location, at approximately 1:00 a.m., the detectives observed two men and defendant exit the complex and walk hurriedly to a parked vehicle in

the parking lot; 3) the detectives noticed the men placing what appeared to be a rifle wrapped in a blanket and a black tote bag, possibly containing controlled substances, in the trunk of the automobile; and 4) the time of day, the detectives' experience, and the detectives' prior knowledge of the propensity of the area for criminal conduct revealed that it was not unreasonable to infer that the occupant of the vehicle engaged in some sort of criminal activity.

**Searches and Seizures 4 (NCI4th)--Murder--Search of victim's automobile in defendant's possession--No expectation of privacy**

*State v. MLO, 335 N.C. 353 (1994) 440 S.E.2d 98*

**Searches and Seizures 12 (NCI3d)—DWI--investigatory stop - Communication from another officer**

*State v. Battle, 109 N.C. App. 367 (1993) 427 S.E.2d 156*

An investigatory stop of a vehicle was constitutional and the trial court erred by suppressing evidence obtained therefrom in a DWI prosecution where the first officer, Officer Harmon, observed defendant sitting in the driver's seat of a red four door Pontiac in the parking lot of a washerette; Officer Harmon believed defendant was impaired by alcohol based on tests given defendant and the odor of alcohol on his person; Officer Harmon told defendant not to drive and drove his vehicle from the parking lot, leaving defendant and other men standing near defendant's vehicle; Officer Harmon radioed Officer Beekin to be on the lookout for a red four door Pontiac with the license plate number of defendant's automobile; Officer Beekin saw an automobile fitting that description leave the parking lot and drive onto a public street; Officer Beekin followed the vehicle for approximately four blocks and did not observe anything unusual about the operation of the automobile; and Officer Beekin stopped the automobile and arrested defendant for driving while impaired. Although Officer Beekin did not have the reasonable suspicion necessary to make the stop of defendant's vehicle based either on his own observations or on any particular information communicated to him by Officer Harmon, the instructions to "be on the lookout" for the vehicle were tantamount to a request "to stop" the vehicle and the stop was therefore constitutional.

**1) Searches and Seizures 12 (NCI3d)--Investigatory stop of car--Reasonable suspicion of criminal activity**

*State v. Holmes, 109 N.C. App. 615 (1993) 428 S.E.2d 277*

An officer had an articulable and reasonable suspicion that occupants of a car were engaged in criminal activity to justify his investigatory stop of

the vehicle where he received a radio communication from a vice and narcotics officer that the other officer had made the following observations: defendant drove slowly into a neighborhood known for its violence and drugs; defendant engaged two different groups of people in conversation previously made drug-related arrests; defendant then returned to the car after only a few minutes and lit a cigarette which he shared with the two passengers in the car until the cigarette was gone and the car filled with smoke, leading the officer to believe that the cigarette was a marijuana cigarette; defendant then placed a plastic bag in the trunk of the car and returned to the house for thirty seconds; and when defendant returned to the car, he carefully concealed an object underneath the driver's seat.

**2) Searches and Seizures 11 (NCI3d)--Lawful investigatory stop--  
Observation of drug paraphernalia--Probable cause to search car**

*State v. Holmes, 109 N.C. App. 615 (1993) 428 S.E.2d 277*

**Searches and Seizures 11 (NCI3d) --Inventory search of vehicle--Impropriety  
--Failure to suppress seized items--Error**

*State v. Peaten, 110 N.C. App. 749 (1993) 431 S.E.2d 237*

It was impermissible for officers to inventory, impound, or tow defendant's car, and items seized from the car during an inventory search should have been suppressed, since the vehicle was not obstructing traffic, was not a disabled or damaged vehicle, and did not threaten the public safety by some other means; the car was parked in the lot of a club which officers searched to determine whether taxpaid liquor was being sold; defendant was not present to make a disposition about the car which was presenting no traffic hazard; towing the car was in no way necessary to an arrest; the officer decided to tow the car so that it would not be vandalized; and there was no evidence which would establish that a sufficient period of time had elapsed before the police determined that the automobile was abandoned.

**1) Searches and Seizures 12 (NCI3d) - Officer's approach of defendant's  
vehicle - Questions about holster - Conduct amounting to investigatory stop  
or seizure**

*State v. Brooks, 111 N.C. App. 558 (1993) 432 S.E.2d 900 Rev'd by  
supreme court 337 NC 132*

**2) Searches and Seizures 12 (NCI3d) - Agent's approaching and detaining  
defendant - No reasonable suspicion of criminal activity**

*State v. Brooks, 111 N.C. App. 558 (1993) 432 S.E.2d 900 Rev'd by*

*supreme court 337 NC 132*

An SBI agent was not entitled to approach and detain defendant for investigative purposes and his conduct in doing so was not based on a reasonable suspicion based on articulable facts and rational inferences to be drawn there from where the agent and other officers went to a nightclub with a valid search warrant; there was no warrant to search the exterior premises nor was there evidence that police had a reason to suspect that drug sales were taking place in the parking lot;

**Searches and Seizures 12 (NCI3d) - DWI - No reasonable and articulable suspicion to stop vehicle - Evidence suppressed**

*State v. Watkins, 111 N.C. App. 766 (1993) 433 S.E.2d 817*

**Searches and Seizures 26 (NCI4th) - Stop of vehicle - Probable cause to search defendant – Sufficiency of evidence**

*State v. Whitted, 112 N.C. App. 640 (1993) 436 S.E.2d 275*

An officer had probable cause to search defendant where the officer knew that the car in which defendant was a passenger fled at high speed from in front of a residence known for drug trafficking; the officer knew drug transactions were frequently made at curbside in this neighborhood; after the stop defendant acted suspiciously by pushing something into his pocket and refusing to remove his hand after the officer asked him to do so;

**1) Searches and Seizures 80 (NCI4th) - Crack cocaine - Initial approach by SBI agent - No reasonable suspicion required**

*State v. Brooks, 337 N.C. 132 (1994) Rev'd Ct Appeals 111 N. C. APP. 558*

This conduct by the agent did not amount to an investigatory "stop" and certainly was not a "seizure"; as a result, no reasonable suspicion was required for the agent's initial approach and questioning of the defendant. No one is protected by the Constitution against the mere approach of police officers in a public place.

**2) Searches and Seizures 82 (NCI4th) - Cocaine - Empty holster on car seat - Questioning by officer – No Miranda warnings**

*State v. Brooks, 337 N.C. 132 (1994) Rev'd Ct Appeals 111 N. C. APP. 558*

An SBI agent was not required to give a defendant eventually indicted on cocaine charges Miranda warnings before asking the location of a gun where the agent did not "stop" the defendant, but merely walked up to the defendant, who was sitting in his vehicle, shined a light into the interior, and, upon seeing the empty holster on the seat beside the defendant, acted quite reasonably and properly in asking the defendant about the location of defendant's gun.

**Searches and Seizures 82 (NCI4th)--Warrantless search of vehicle--  
Protective frisk admissibility of handgun**

*State v. Clyburn, 120 N.C. App. 377 (1995)*

The search of the glove compartment of defendant's car was justified as a protective frisk, and the seizure of a .357 Magnum handgun found in the glove compartment was lawful, where officers made an investigatory stop of defendant's car; after officers frisked defendant and a female passenger, defendant became belligerent; and the officers reasonably believed that defendant might be armed because of his suspected involvement in drug trafficking.

**Searches and Seizures § 77 (NCI4th) impaired driving checking station  
compliance with guidelines motion to suppress improperly granted**

*State v. Barnes, 123 N.C. App. 144 (1996) 472 S.E.2d 784*

**Searches and Seizures § 77 (NCI4th) detaining defendant for Alco-sensor test  
reasonable, articulable suspicion of crime**

*State v. Rogers, 124 N.C. App. 364 (1996) 477 S.E.2d 221*

An officer had a reasonable, articulable suspicion that defendant was committing the crime of driving while impaired in his presence and thus properly detained defendant for an Alco-sensor test where defendant stopped his vehicle in an intersection after being directed to turn by the officer; the officer approached defendant's vehicle and engaged in a short conversation with defendant; and the officer detected a strong odor of alcohol on defendant's breath.

**1) Searches and Seizures § 35 (NCI4th) - Stop of vehicle - Seat belt violation -  
Cocaine - Passenger**

*State v. Hamilton, 125 N.C. App. 396 (1997)*

The trial court did not err in denying defendant's motion to suppress where

a police officer discovered 19.2 grams of cocaine on defendant after the officer stopped the vehicle in which defendant was a passenger. The officer had authority to stop the vehicle for the purpose of issuing a seat belt citation because he had observed that neither the driver nor the defendant was wearing one. The stop of the vehicle was therefore not inconsistent with the Fourth Amendment, even though a reasonable officer may not have made the stop.

**2) Searches and Seizures § 35 (NCI4th) - Stop of vehicle - Seat belt violation - Asking passenger to exit vehicle - Discovery of cocaine**

*State v. Hamilton, 125 N.C. App. 396 (1997)*

It was not error for the trial court to deny defendant's motion to suppress evidence of 19.2 grams of cocaine which was seized from defendant, a passenger in a vehicle which was stopped during a routine traffic violation, after defendant was asked to exit the vehicle. The police officer had probable cause to believe that the defendant passenger had committed the infraction of riding in the front seat of a vehicle without wearing a seat belt and thus his detention was more than an inevitable incident of the stopping of the vehicle. As such, the rationale that supports allowing the police to per se request a driver detained for a traffic violation to exit the vehicle applies to a request to a passenger who the police have probable cause to believe has committed a crime or infraction.

**3) Searches and Seizures § 82 (NCI4th) - Traffic stop - Pat-down search for weapons - Discovery of cocaine**

*State v. Hamilton, 125 N.C. App. 396 (1997)*

The evidence supported the trial court's denial of defendant's motion to suppress cocaine discovered during a pat-down search of defendant pursuant to a routine traffic stop. The defendant's hand began to reach toward his left side just before exiting the vehicle. The trial court found cause for the police officer to believe that the defendant was reaching for a weapon. Therefore, the pat-down of defendant was reasonable since the officer had grounds to believe the defendant could be armed and dangerous.

**1) Searches and Seizures § 80 (NCI4th) - Investigatory stop - Departure from drug house – Evasive actions investigatory stop - Reasonable suspicion**

*State v. Willis, 125 N.C. App. 537 (1997)*

The trial court did not err in concluding that police officers had reasonable suspicion to make an investigatory stop of defendant after defendant left a

suspected drug house just before a search warrant was executed where defendant took evasive action when he knew he was being followed. When an individual's presence at a suspected drug area is coupled with evasive actions, police may form from those actions the quantum of reasonable suspicion necessary to conduct an investigatory stop.

## **2) Searches and Seizures § 80 (NCI4th) - Cocaine - Investigatory stop - Pat down – Exigent circumstances**

*State v. Willis, 125 N.C. App. 537 (1997)*

The trial court did not err in allowing the introduction of crack cocaine seized during an investigatory stop of defendant where the arresting officers suspected defendant was associated with drug trafficking. It is entirely understandable that police officers justifiably feared for their personal safety when their common-sense association of drugs and guns is combined with defendant's exit from a suspected drug house just prior to police execution of a search warrant; defendant's furtive, evasive behavior; defendant's nervous demeanor; and the sudden lunge of defendant's hand into the interior of his jacket during the patdown by one of the officers. It is of no consequence that the jacket pocket did not contain a weapon; in the highly charged atmosphere resulting from defendant's sudden act, the detective moved in an immediate fashion to protect himself and other officers. The detective's search was limited to the jacket pocket and was proportionate to the exigent circumstances which occurred.

## **Searches and Seizures § 77 (NCI4th) - Roadblock - Approved by sheriff - Not discretionary action - Every vehicle stopped - Violation of Fourth Amendment rights driving while impaired**

*State v. Grooms, 126 N.C. App. 88 (1997)*

In a prosecution for driving while subject to an impairing substance, the trial court did not err in denying defendant's motion to suppress evidence obtained as a result of defendant being stopped at a police roadblock where the evidence indicated that the roadblock was approved by the sheriff and was not a totally discretionary action, and every vehicle that approached the roadblock was stopped for the purpose of locating people with outstanding warrants, making a license check, and checking for stolen vehicles. Therefore, defendant's Fourth Amendment rights under *Delaware v. Prouse, 440 U.S. 648, 52 L.Ed. 2d 660 (1979)*, were not violated. *Maryland v. Dyson, 65 Crim. L. Rep. 2070 (21 June 1999)*. Officers developed probable cause to search a vehicle for drugs. About thirteen hours later, the officers stopped and searched the vehicle without a search warrant. The Court reaffirmed its prior rulings, *United States v. Ross, 456 U.S. 798, 102 S. Ct. 2157, 72 L. Ed. 2d 572 (1982)* and

Pennsylvania v. Labron, 518 U.S. 938, 116 S. Ct. 2485, 135 L. Ed. 2d 1031 (1996), that probable cause to search a vehicle permits a warrantless search of the vehicle; a showing of exigent circumstances is not required.

### **Searches and Seizures § 81 (NCI4th) - Cocaine - Seized during traffic stop - No reasonable and articulable suspicion**

*State v. Falana, 129 N.C. App. 813 (1998)*

The trial court erred by denying defendant's motion to suppress cocaine seized following a traffic stop where, assuming that the initial stop was valid, the detention of defendant after the issuance of a warning ticket was improper. The trooper's justification of his search of defendant's vehicle was based on his opinion that defendant was nervous and on the passenger being uncertain as to what day their trip had begun. *State v. Pearson, 348 N.C. 272*, compels the conclusion that the trooper's suspicions, even if genuine, did not reach the level of reasonable and articulable suspicion.

#### **1) Search and Seizure - Traffic stop - Probable cause**

*State v. McClendon, 130 N.C. App. 368 (1998)*

The traffic stop of a defendant ultimately charged with possessing more than fifty pounds of marijuana did not violate his constitutional rights where the evidence supports the trial court's findings that both a mini-van and the station wagon driven by defendant were traveling in excess of the posted speed limit and that defendant was following the mini-van too closely. It is evident that the trooper had probable cause to stop defendant's vehicle and the stop was not inconsistent with the Fourth Amendment, even though a reasonable officer may not have made the stop.

#### **2) Search and Seizure - Traffic stop - Initial investigation - Permissible scope**

*State v. McClendon, 130 N.C. App. 368 (1998)*

In a prosecution for possession of more than fifty pounds of marijuana, the continued restrictions on defendant's departure beyond the scope of a traffic stop were not unreasonable where the questioning engaged in by the trooper was legitimately aimed at confirming defendant's identity in light of the fact that he was unable to produce the vehicle's registration and was unable to identify the name of the person listed on the vehicle's title despite the fact that the address on the title was the same as that on his driver's license. The questions concerning defendant's travels and his relationship with the driver of a mini-van whom he had been following

closely and which was also stopped were reasonably related to the purpose of issuing defendant a warning ticket for following too closely.

### **3) Search and Seizure - Traffic stop - Detention beyond warning ticket - Reasonable suspicion or probable cause**

*State v. McClendon, 130 N.C. App. 368 (1998)*

In a prosecution for the possession of more than fifty pounds of marijuana, the detention of defendant subsequent to the issuance of a warning ticket was supported by reasonable suspicion or probable cause in that defendant was unable to produce a registration card for the vehicle; defendant provided inconsistent information about the ownership of the vehicle, having indicated that it was owned by his girlfriend, whose name was different from the name on the title; the trooper was of the opinion that defendant appeared nervous; another trooper observed that defendant was fidgety, vague and evasive when answering questions; defendant failed to make eye contact when being questioned about the station wagon, its ownership, and his girlfriend; there was information that both defendant's station wagon and a mini-van in front of him had come from Texas; the travel information given by both defendant and the driver of the mini-van was vague, and appeared unreasonable; and it was the opinion of one trooper that the two vehicles were traveling together with the mini-van as a decoy vehicle for defendant's vehicle. While any one of these factors may not be sufficient to show a reasonable suspicion, no violation of defendant's constitutional rights occurred on the totality of the circumstances.

### **1) Searches and Seizures § 81 (NCI4th) - Traffic stop - Consent to search car - Driver frisked as standard procedure - Not justified**

*State v. Pearson, 348 N.C. 272 (1998)*

The circumstances did not justify a nonconsensual search of defendant's person where defendant was stopped for his driving, she was issued a warning ticket and consented to a search of his car, she was frisked by one officer while another searched the car, and cocaine was found on his person. Defendant was stopped at 3:00 p.m. on an interstate highway and had a slight odor of alcohol but not enough to be charged with driving while impaired, which should not give rise to a reasonable suspicion of criminal activity; the nervousness about which a trooper testified is not significant because many people become nervous when stopped by a state trooper; the variance in the statements of the defendant and his fiancée about where they had been the night before did not show criminal activity; the officers testified defendant was frisked because it was standard procedure to do so when a vehicle was searched; the officers had

never before encountered defendant and were not aware of any criminal record or investigation for drugs pertaining to him; defendant was polite and cooperative; the bundle in his pants was not obvious and was not noticed by either officer; and defendant had been in the presence of the trooper for over ten minutes, including being left alone in the patrol car while the trooper talked to defendant's fiancée, without making any movement or statement to indicate that she had a weapon.

## **2) Searches and Seizures § 61 (NCI4th) - Traffic stop - Consent to search vehicle - Defendant told his person would be searched - Acquiescence not consent**

*State v. Pearson, 348 N.C. 272 (1998)*

The conclusion of a superior court judge that a defendant in a cocaine possession and trafficking prosecution had consented to a search of his person was erroneous where defendant was stopped in midafternoon for his driving; she was polite and cooperative; the officer detected alcohol but not enough to charge him with driving while impaired; defendant was in the officer's presence for about ten minutes before the search and was left alone in the patrol car at one point; defendant had made no movement or statement to indicate that she had a weapon; the trooper asked defendant for permission to search defendant's car and defendant signed a consent form; another trooper arrived and was asked by the first to frisk defendant while defendant's car was searched; both troopers testified that standard procedure requires frisking every individual whose car is searched; the second trooper told defendant that she was going to search him and requested that defendant place his hands on the back of the patrol car; and cocaine was found on defendant's person. The consent signed by defendant applied only to the vehicle and cannot be broadened to include his person and the acquiescence of the defendant when the officer told him she would frisk him was not a consent, considering all of the circumstances. There must be a clear and unequivocal consent before a defendant can waive his constitutional rights.

## **3) Search and Seizure - Warrantless search of automobile - Actions not clearly furtive**

*State v. Minor, 132 N.C. App. 478 (1999)*

A motion to suppress a controlled substance and a weapon should have been granted where a vehicle was stopped for having a smeared temporary license tag, the driver and passengers were removed from the vehicle, the interior of the car was searched without permission, and a weapon and crack cocaine were found in a jacket behind where defendant had been

sitting. Defendant merely accessed the center console and rubbed his hands on his legs before he was removed from the car; his actions were not clearly furtive and the evidence does not support a finding that the officers had specific knowledge linking defendant to some criminal activity or any reasonable belief he was armed or dangerous.

**Search and Seizure - Avoidance of DWI checkpoint - Automobile followed - hiding in driveway - Reasonable and articulable suspicion of criminal activity**

*State v. Foreman, 133 N.C. App. 292 (1999)*

There was a reasonable and articulable suspicion of criminal activity prior to defendant's seizure for driving while impaired where defendant made a quick left turn at the intersection immediately preceding a DWI checkpoint, an officer followed without engaging his siren or blue lights, the vehicle made a second abrupt left turn and parked in a residential driveway, the officer used his lights to see into the vehicle, defendant did not attempt to restart or exit the vehicle, all of its occupants remained "scrunched down" in the vehicle even though it was parked with its engine and lights off, the officer continuously watched the vehicle until backup arrived, and the occupants did not change positions. Although a legal left turn at an intersection immediately preceding a posted DWI checkpoint does not justify an investigatory stop without more, it is constitutionally permissible for officers to follow vehicles that legally avoid DWI checkpoints and the defendant here was seized, at the earliest, when backup arrived. The objective facts the officer observed prior to the arrival of backup were sufficient to raise a reasonable and articulable suspicion of criminal activity.

**1) Search and Seizure - Traffic stop - Probable cause - Objective standard**

*State v. McClendon, 350 N.C. 630 (1999)*

For situations arising under the North Carolina Constitution, an objective rather than subjective standard must be applied to determine the reasonableness of police action related to probable cause. The reasoning of *Whren v. United States*, 517 U.S. 806, is compelling and is adopted. *Whren* conclusively establishes that the inquiry is no longer what a reasonable officer would do but what a reasonable officer could do and puts an end to issues involving whether the existence of probable cause for a traffic stop has been used as a pretext for stopping defendant for other reasons.

**2) Search and Seizure - Traffic stop - Probable cause - Pretext**

*State v. McClendon, 350 N.C. 630 (1999)*

Officers were justified in stopping defendant's vehicle in what became a narcotics prosecution where defendant's vehicle and another vehicle were exceeding the posted speed limit and defendant's vehicle was following too closely. Although defendant contended that the stated purpose of a speeding violation was a mere pretext for investigating him for possession of illegal drugs, the officer's subjective motive for the stop is immaterial.

### **3) Search and Seizure - Traffic stop - Detention beyond warning ticket - Reasonable suspicion**

*State v. McClendon, 350 N.C. 630 (1999)*

In a prosecution for possession of marijuana, the detention of defendant from the time a warning ticket was issued until the time a canine unit arrived was reasonable under the totality of the circumstances in that defendant first said that his girlfriend owned the car but would not give her name; he eventually said that his girlfriend "Anna" owned the car, when the trooper inquired "Anna?" defendant said "I think so"; Anna was not the name listed on the title as the owner of the car; the address of the owner listed on the title and the address on defendant's license were the same; and defendant was extremely nervous. Language in *State v. Pearson, 348 N.C. 272*, regarding nervousness was not meant to imply that nervousness can never be significant in determining whether an officer could form a reasonable suspicion that criminal activity is afoot. Nervousness must be taken in light of the totality of circumstances and is an appropriate factor to consider when determining whether a basis for a reasonable suspicion exists. In this case, defendant exhibited more than ordinary nervousness.

### **4) Search and Seizure - Traffic stop - Detention beyond initial investigation - Reasonable duration**

In a marijuana prosecution, the detention of defendant for fifteen to twenty minutes between the issuance of a warning ticket and the arrival of a canine unit was reasonable. The officers acted quickly and diligently to obtain the canine unit and promptly put the drug detection dog to work upon its arrival.