

TOOLS OF THE TRADE

The A, B, C's of District Court

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Attacking the Credibility of Hearsay Declarant §8C-1, Rule 806

When a hearsay statement has been admitted in evidence, the credibility of the declarant may be attacked, and if attacked may be supported, by any evidence which would be admissible for those purposes if declarant had testified as a witness.

Record

Recanted

Prior bad acts

Bond Procedures §15A-534

(a) In determining conditions of pretrial release a judicial official **must** impose one of the following conditions:

(1) Release the defendant on his **written promise** to appear.

(2) Release the defendant upon his execution of an **unsecured** appearance bond in an amount specified by the judicial official.

(3) Place the defendant in the **custody of a designated person** or organization agreeing to supervise him.

(4) Require the execution of an **appearance bond** in a specified amount secured by a cash deposit of the full amount of the bond, by a mortgage pursuant to *G.S. 58-74-5*, or by at least one solvent surety.

If condition (3) is imposed, however, the defendant may elect to execute an appearance bond under subdivision (4). . . .

(b) The judicial official in granting pretrial release **must** impose condition (1), (2), or (3) in subsection (a) above **unless** he determines that such release will not reasonably assure the appearance of the defendant as required;

will pose a danger of injury to any person; or

is likely to result in destruction of evidence, subornation of perjury, or intimidation of potential witnesses.

Upon making the determination, the judicial official must then impose condition (4) in subsection (a) above instead of condition (1), (2), or (3), and **must record** the reasons for so doing in writing to the extent provided in the policies or requirements issued by the senior resident superior court judge pursuant to *G.S. 15A-535(a)*.

Cost of Court §6-49

In all criminal actions in any court, if the defendant is acquitted, nolle prosequi entered, or judgment against him is arrested, or if the defendant is discharged from arrest for want of probable cause the costs, including the fees of all witnesses . . . shall be **paid by the prosecuting witness** whenever the judge is of the opinion that there was not reasonable ground for the prosecution, or that it was not required by the public interest. . . .

Every judge is authorized to determine who the prosecuting witness is at any stage of a criminal proceeding. . . .

§6-50 authorizes **imprisonment** for the willful nonpayment when the judge finds that the prosecution was frivolous or malicious.

District courts always open §7A-190

The district courts shall be deemed always open for the disposition of matters properly cognizable by them. But all trials on the merits shall be conducted at trial sessions regularly scheduled as provided in this Chapter.

§7A-191 Trials; hearings and orders in chambers

. . . All other proceedings, hearings, and acts may be done or conducted by a judge **in chambers** in the absence of the clerk or other court officials and at any place within the district; but no hearing may be held, nor order entered, in any cause outside the district in which it is pending without the consent of all parties affected thereby.

Evidence

§8C-1, Rule 104 Preliminary questions

(a) Questions of admissibility generally. - Preliminary questions concerning the qualification of a person to be a witness, the existence of a privilege, or the admissibility of evidence shall be determined by the court, subject to the provisions of subdivision (b). In making its determination it is not bound by the rules of evidence except those with respect to privileges.

§8C-1, Rule 1101 Applicability of rules

(b) Rules inapplicable . . .

(3) Miscellaneous Proceedings. - Proceedings for extradition or rendition; first appearance before district court judge or probable cause hearing in criminal cases; sentencing, or granting or revoking probation; issuance of warrants for arrest, criminal summonses, and search warrants; proceedings with respect to release on bail or otherwise.

§8C-1, Rule 104 Preliminary questions

(d) Testimony by accused. - The accused does not, by testifying upon a preliminary matter, subject himself to cross-examination as to other issues in the case.

Felonies §15A-1340.14 Prior record level for felony sentencing

(b)(5) For each prior misdemeanor conviction as defined in this subsection, 1 point. For purposes of this subsection, misdemeanor is defined as any **Class A1 and Class 1 nontraffic misdemeanor offense**, impaired driving, impaired driving in a commercial vehicle, and misdemeanor death by vehicle, but not any other misdemeanor traffic offense under Chapter 20 of the General Statutes.

§15A-1340.14 Prior record level for felony sentencing

(d) If an offender is convicted of more than one offense in a single session of district court, **only one** of the convictions is used.

§15A-1340.11 Definitions

(7) Prior conviction. - A person has a prior conviction when, on the date a criminal judgment is entered, the person being sentenced has been previously convicted of a crime:

a. In the district court, and the person has not given notice of appeal and the **time for appeal has expired**.

Guilty, No Contest and Alford Pleas

§15A-1011 Pleas in district and superior courts

(a) A defendant may plead not guilty, guilty, or no contest "(nolo contendere)."

(b) A defendant may plead no contest only with the consent of the prosecutor and the presiding judge.

North Carolina v. Alford, 400 U.S. 25, 91 S. Ct. 160 (1970)

Thus, while most pleas of guilty consist of both a waiver of trial and an express admission of guilt, the latter element is not a constitutional requisite to the imposition of criminal penalty. An individual accused of crime may voluntarily, knowingly, and understandingly consent to the imposition of a prison sentence even if he is **unwilling or unable to admit his participation in the acts constituting the crime.**

House Arrest, Split Sentences and credit for DWI's

§20-179. Sentencing hearing after conviction for impaired driving

(g) Level One Punishment . . . The term of imprisonment may be suspended only if a condition of special probation is imposed to require the defendant to serve a term of imprisonment of at least **30 days**.

(h) Level Two Punishment . . . The term of imprisonment may be suspended only if a condition of special probation is imposed to require the defendant to serve a term of imprisonment of at least **7 days**.

(k1) Credit for Inpatient Treatment. - Pursuant to G.S. 15A-1351(a), the judge may order that a term of imprisonment imposed as a condition of special probation under any level of punishment be served as an inpatient in a facility operated or licensed by the State for the treatment of alcoholism or substance abuse where the defendant has been accepted for admission or commitment as an inpatient. . . . The judge may credit against the active sentence imposed on a defendant the time the defendant was an inpatient at the treatment facility, provided such **treatment occurred after the commission of the offense** for which the defendant is being sentenced. . . .

(p)(1) The judge may not give credit to the defendant for the **first 24 hours** of time spent in incarceration pending trial.

§20-138.5. Habitual impaired driving

(b) A person convicted of violating this section shall be punished as a **Class F felon** and shall be sentenced to a minimum active term of not less than **12 months** of imprisonment, which shall not be suspended. Sentences imposed under this subsection shall run consecutively with and shall commence at the expiration of any sentence **being served**.

Immunity after Deferred Prosecution §15A-1342

(i) Upon the expiration or early termination as provided in subsection (b) of a period of probation imposed after deferral of prosecution and before conviction, the defendant shall be immune from prosecution of the charges deferred.

§15A-1341 Probation generally

(a1) Deferred Prosecution. - A person who has been charged with a Class H or I felony or a misdemeanor may be placed on probation as provided in this Article. . . .

§15A-1344 (d) . . . The probation period shall be tolled if the probationer shall have pending against him criminal charges in any court of competent jurisdiction, which, upon conviction, could result in revocation proceedings against him for violation of the terms of this probation. . . . If a convicted defendant violates a condition of probation . . . or may order that charges as to which prosecution has been deferred be brought to trial.

Juvenile interrogation §7B-2101

- (a) Any juvenile in custody must be advised prior to questioning:
- (1) That the juvenile has a right to remain silent;
 - (2) That any statement the juvenile does make can be and may be used against the juvenile;
 - (3) That the juvenile has a right to have a parent, guardian, or custodian present during questioning; and
 - (4) That the juvenile has a right to consult with an attorney and that one will be appointed for the juvenile if the juvenile is not represented and wants representation.

(d) Before admitting into evidence any statement resulting from custodial interrogation, the court shall find that the juvenile knowingly, willingly, and understandingly waived the juvenile's rights.

§7B-101 Definitions

(14) Juvenile. -- A person who has not reached the person's eighteenth birthday and is not married, emancipated, or a member of the armed forces of the United States.

Knife exception to CCW §14-269

(d) This section does not apply to an **ordinary pocket knife** carried in a closed position. As used in this section, 'ordinary pocket knife' means a small knife, designed for carrying in a pocket or purse, that has its cutting edge and point entirely enclosed by its handle, and that may not be opened by a throwing, explosive, or spring action.

a pocket knife that was four and one-half inches in overall length was an "ordinary pocket knife" as defined by this statute (*In re Dale B.*, 96 N.C. App. 375, 385 S.E.2d 521 (1989)).

(a) It shall be unlawful for any person willfully and intentionally to carry concealed about his person any bowie knife, dirk, dagger, slung shot, loaded cane, metallic knuckles, razor, shurikin, stun gun, or other deadly weapon of like kind, except when the person is on the person's own premises.

Legal Entity Rule for Larceny

To be sufficient, a criminal pleading for larceny must allege the identity of the owner of the property or the identity of the person in lawful possession of the property and the evidence must support the allegation.

Watch for fatal variance between allegation and proof.

Incorporation Rule - A warrant for the larceny of property from "Belk's Department Store" is fatally defective in failing to allege sufficiently that the owner of the property allegedly stolen is either a **natural person or a legal entity** capable of owning property. *State v. Thompson*, 6 N.C. App. 64, 169 S.E.2d 241 (1969).

Modification of order on motion of person detained §15A-538

(a) A person who is detained or objects to the conditions required for his release which were imposed or allowed to stand by order of a district court judge may **apply in writing** to a superior court judge to modify the order. See attached Request for Modification.

Notary Acts §10A-9 Powers and limitations

(b) A notarial act shall be attested by all of the following:

- (1) The **signature** of the notary, exactly as shown on the notary's commission.
- (2) The **readable** appearance of the notary's name, either from the notary's signature or from the notary's typed, printed, or embossed name near the signature.
- (3) The clear and legible appearance of the notary's **stamp or seal**.
- (4) A statement of the **date the notary's commission expires**.

§ 10A-11. Notarial stamp or seal

. . . The stamp or seal shall clearly show and legibly reproduce under photographic methods, when embossed, stamped, impressed, or affixed to a document, the **name** of the notary **exactly as it appears on the commission**, the name of the **county** in which appointed and qualified, the words "**North Carolina**" or an abbreviation thereof, and the words "**Notary Public**".

§ 10A-16. Acts of notaries public in certain instances validated

(b) All documents bearing a notarial seal and which contain any of the following **errors are validated** and given the same legal effect as if the errors had not occurred:

- (1) The **date of the expiration of the notary's commission** is stated, whether correctly or erroneously.
- (2) The notarial seal does not contain a **readable impression** of the notary's name, contains an **incorrect spelling** of the notary's name, or **does not bear the name of the notary exactly as it appears on the commission**, as required by G.S. 10A-11.
- (3) The notary's **signature does not comport exactly** with the name on the notary commission or on the notary seal, as required by G.S. 10A-9.

(4) The notarial seal contains typed, printed, drawn, or handwritten material added to the seal, **fails to contain the words "North Carolina"** or the abbreviation "N. C.", or contains correct information except that instead of the abbreviation for North Carolina contains the abbreviation for another state.

(d) This section applies to notarial acts **performed on or before** July 1, 2002. [This is changed every year and was just recently changed to **March 1, 2003**]

Ordinances and City Codes §160A-79 Pleading and proving city ordinances

In re Jacobs, 33 N.C. App. 195, 234 S.E.2d 639 (1977)

Respondent's motion to quash a juvenile petition which alleged a violation of "City Code 15-2" should have been allowed since the petition did not allege the caption of the city code as required.

State v. Pallet, 283 N.C. 705, 198 S.E.2d 433 (1973)

The courts will take judicial notice of municipalities, counties and other political subdivisions of the State, **but they will not take judicial notice of municipal ordinances**. A criminal prosecution for violation of a municipal ordinance cannot be maintained if the warrant on which it is based does not set out the ordinance or plead it in a manner permitted by G.S. 160A-79(a).

§160A-79 Pleading and proving city ordinances

(a) In all civil and criminal cases a city ordinance that has been codified in a code of ordinances adopted and issued in compliance with G.S. 160A-77 must be **pleaded by both section number and caption**. In all civil and criminal cases a city ordinance that has not been codified in a code of ordinances adopted and issued in compliance with G.S. 160A-77 must be pleaded by its caption. In both instances, it is not necessary to plead or allege the substance or effect of the ordinance unless the ordinance has no caption and has not been codified.

(b) Any of the following shall be admitted in evidence in all actions or proceedings before courts or administrative bodies and shall have the **same force and effect as would an original ordinance**:

(1) A **city code** adopted and issued in compliance with G.S. 160A-77, containing a statement that the code is published by order of the council.

(2) **Copies of any part of an official map book** maintained in accordance with G.S. 160A-77 and certified under seal by the city clerk as having been adopted by the council and maintained in accordance with its directions (the clerk's certificate need not be authenticated).

(3) A **copy of an ordinance** as set out in the minutes, code, or ordinance book of the council, certified under seal by the city clerk as a true copy (the clerk's certificate need not be authenticated).

(4) **Copies of any official lists or schedules** maintained in accordance with G.S. 160A-77 and certified under seal by the city clerk as having been adopted by the council and maintained in accordance with its directions (the clerk's certificate need not be authenticated).

(c) The burden of pleading and proving the existence of any modification or repeal of an ordinance, map, or code, a copy of which has been duly pleaded or admitted in evidence in accordance with this section, shall be upon the party asserting such modification or repeal. **It shall be presumed that any portion of a city code that is admitted in evidence in accordance with this section has been codified in compliance with G.S. 160A-77**, and the burden of pleading and proving to the contrary shall be upon the party seeking to obtain an advantage thereby.

PJC's & Prior conviction §15A-1340.11 Definitions

State v. Hatcher, 136 N.C. App. 524, 524 S.E.2d 815 (2000)

Defendant next contends the court erred in computing his prior record level points by assessing points for an offense to which he pled no contest and for which prayer for judgment was continued. "A person has a prior conviction when, on the date a criminal judgment is entered, the person being sentenced has been previously convicted of a crime" N.C. Gen. Stat. @ 15A-1340.11 (7) (1997). "For the purpose of imposing sentence, a person has been convicted when he has been adjudged guilty or has entered a plea of guilty or no contest." N.C. Gen. Stat. @ 15A-1331(b) (1997). We have interpreted N.C. Gen. Stat. @ 15A-1331(b) to mean that formal entry of judgment is not required in order to have a

conviction. *State v. Fuller*, 48 N.C. App. 418, 268 S.E.2d 879, disc. review denied, 301 N.C. 403, 273 S.E.2d 448 (1980). Consequently, we conclude that defendant was convicted of the prior offense when he entered the plea of no contest even though no final judgment had been entered. This assignment of error is overruled.

§15A-1340.11 (7) Prior conviction. - A person has a prior conviction when, on the date a criminal judgment is entered, the person being sentenced has been previously convicted of a crime:

- a. In the district court, and the person has not given notice of appeal and **the time for appeal has expired.**

When an accused is convicted with **prayer for judgment continued, no judgment is entered**, see *State v. Thompson*, 267 N.C. 653, 148 S.E. 2d 613 (1966), and **no appeal is possible** (until judgment is entered).

When the prayer for judgment is continued there is no judgment only a motion or prayer by the prosecuting officer for judgment. And when the court enters an order continuing the prayer for judgment and at the same time imposes conditions amounting to punishment (fine or imprisonment) the order is in the nature of a final judgment, from which the defendant may appeal. *State v. Griffin*, 246 N.C. 680, 100 S.E.2d 49 (1957).

Quarter and Double Rules

§15A-1351 Sentence of imprisonment; incidents; special probation
. . . Except for probationary sentences of impaired driving under G.S. §20-138.1, the total of all periods of confinement imposed as an incident of special probation, but not including an activated suspended sentence, may not exceed **six months or one fourth** the maximum sentence of imprisonment imposed for the offense, whichever is less. . . . In imposing a sentence of special probation, the judge may credit any time spent committed or confined, as a result of the charge, to **either the suspended sentence or to the imprisonment required for special probation.**

For offenses committed on or after December 1, 2003, the six-month cap has been removed. This will not affect any misdemeanor case, but can allow for a longer split for felony cases.

§15A-1340.22 Multiple convictions

(a) Limits on Consecutive Sentences. - If the court elects to impose consecutive sentences for two or more misdemeanors and the most serious misdemeanor is classified in Class A1, Class 1, or Class 2, the cumulative length of the sentences of imprisonment **shall not exceed twice the maximum sentence authorized for the class and prior conviction level of the most serious offense.** Consecutive sentences shall not be imposed if all convictions are for Class 3 misdemeanors.

Record §8C-1, Rule 609

For the purpose of attacking the credibility of a witness, evidence that the witness has been convicted of a felony, or of a Class A1, Class 1, or Class 2 misdemeanor, shall be admitted if elicited from the witness or established by public record during cross-examination or thereafter.

Does it include DWI? See *State v. Gregory*, 154 N.C. App. 718 (2002).

N.C. Gen. Stat. § 20-138.1(d) states that "impaired driving as defined in this section is a misdemeanor." N.C. Gen. Stat. § 15A-1340.23(a) (2001) provides that "if the offense is a misdemeanor for which there is no classification, it is as classified in G.S. 14-3." The relevant portion of N.C. Gen. Stat. § 14-3 (2001) states that any misdemeanor that has a specific punishment, but is not assigned a classification by the General Assembly pursuant to law is classified as follows, based on the maximum punishment allowed by law for the offense... (1) If that maximum punishment is more than six months imprisonment, it is a **Class 1 misdemeanor**....

What about PJC's?

Statute of Limitations for Misdemeanors §15-1

... (a) All misdemeanors except malicious misdemeanors, shall be presented or found by the grand jury within two years after the commission of the same, and not afterwards: Provided, that if any indictment found within that time shall be defective, so that no judgment can be given thereon, another prosecution may be instituted for the same offense, within one year after the first shall have been abandoned by the State.

Trexler, 316 N.C. 528; 342 S.E.2d 878 (1986)

"our long established rule of corpus delicti requires that there be corroborative evidence, independent of the statements, before defendant may be found guilty of the crime."

"It is well established in this jurisdiction that a naked, uncorroborated, extrajudicial confession is not sufficient to support a criminal conviction."

The corpus delicti rule only requires evidence aliunde the confession which, when considered with the confession, supports the confession and permits a reasonable inference that the crime occurred.

Unconstitutional §15A-954 Motion to dismiss

(a) The court on motion of the defendant must dismiss the charges stated in a criminal pleading if it determines that:

- (1) The statute alleged to have been violated is unconstitutional on its face or as applied to the defendant.
- (2) The statute of limitations has run.
- (3) The defendant has been denied a speedy trial as required by the Constitution of the United States and the Constitution of North Carolina.
- (4) The defendant's constitutional rights have been flagrantly violated and there is such irreparable prejudice to the defendant's preparation of his case that there is no remedy but to dismiss the prosecution.
- (8) The court has no jurisdiction of the offense charged.
- (9) The defendant has been granted immunity by law from prosecution.

(b) Upon suggestion to the court that the defendant has died, the court upon determining that the defendant is dead must dismiss the charges.

Violation of Probation and Modifications §15A-1344

(f) Revocation after Period of Probation. - The court may revoke probation after the expiration of the period of probation if:

- (1) Before the expiration of the period of probation
 - the State
 - has filed

- a written motion
 - with the clerk
 - indicating its intent to conduct a revocation hearing; and
- (2) The court finds that the State has
- made reasonable effort to notify the probationer
 - and to conduct the hearing earlier.

(d) Extension and Modification. At any time prior to the expiration or termination of the probation period, the court may after notice and hearing and for good cause shown **extend** the period of probation. . . . The probation period shall be **tolled** if the probationer shall have pending against him criminal charges . . . which . . . could result in revocation proceedings. . . . The hearing may be held in the **absence of the defendant**, if he fails to appear for the hearing after a reasonable effort to notify him. . . .; provided that probation may not be revoked solely for conviction of a **Class 3 misdemeanor**.

Warrantless Misdemeanor Arrest §15A-401

(b) Arrest by Officer Without a Warrant. -

(2) Offense Out of Presence of Officer. - An officer may arrest without a warrant any person who the officer has probable cause to believe:

- a. Has committed a felony; or
- b. Has committed a misdemeanor, and:
 1. Will **not be apprehended** unless immediately arrested, or
 2. May cause **physical injury** to himself or others, or damage to property unless immediately arrested; or
- c. Has committed a misdemeanor under *G.S. 14-72.1[UC]*, *14-134.3[CD/TRESP]*, *20-138.1[DWI]*, or *20-138.2[Commercial DWI]*; or
- d. Has committed a misdemeanor under *G.S. 14-33(a)[Simple Assault]*, *14-33(c)(1)[AISI]*, *14-33(c)(2)[AOF]*, or *14-34 [Assault by PG]* when the offense was committed by a person with whom the alleged victim has a personal relationship as defined in *G.S. 50B-1*; or
- e. Has committed a misdemeanor under *G.S. 50B-4.1(a)[Viol 50B]*.

e[X]clusion or suppression of unlawfully obtained evidence §15A-974

Upon timely motion, evidence must be suppressed if:

(1) Its exclusion is **required by the Constitution** of the United States or the Constitution of the State of North Carolina; or

(2) It is obtained as a result of a **substantial violation** of the provisions of this Chapter. In determining whether a violation is substantial, the court must consider all the circumstances, including:

- a. The importance of the particular interest violated;
- b. The extent of the deviation from lawful conduct;
- c. The extent to which the violation was willful;
- d. The extent to which exclusion will tend to deter future violations of this Chapter.

Yahoo and other cool websites

See attached list.

Zebra

Could find no Constitutional provision

Could find no statute

Could find no case law

BUT DID FIND §67-2 Permitting Bitch at Large

If any person owning or having any bitch shall knowingly permit her to run at large during the erotic stage of copulation he shall be guilty of a **Class 3 misdemeanor**.

The End!!!

Thanks

Have fun

Always read statute book

Never let them see you sweat

Kick ass

Sit down!!!

SEARCH SOURCES

Find Law

<http://www.findlaw.com/>

Martindale Hubbell

<http://www.martindalehubbell.com/xp/Martindale/home.xml>

Officer Court Appearance Query

<http://www1.aoc.state.nc.us/www/calendars/OfficerQuery.html>

Search for a person or use reverse lookup for phone #'s to find someone

<http://www.anywho.com/>

NATIONAL SOURCES

ACLU

<http://www.aclu.org/>

Federal Bureau of Prisons

<http://www.bop.gov/>

National Highway Traffic Safety Administration

<http://www.nhtsa.dot.gov/>

National Legal Aid and Defender Association

<http://www.nlada.org/>

Public Defender Investigator Network

<http://www.pdinvestigator.net>

US Supreme Court

<http://www.chesslaw.com/supremecourt.htm>

<http://www.supremecourtus.gov/>

STATE SOURCES

Indigent Defense Services

http://www.aoc.state.nc.us/www/public/html/ids_commission.htm

Institute of Government

<http://www.io.gov.edu/> <http://ncinfo.io.gov.edu/>

NC Administrative Code (DWI regs.)

http://ncrules.state.nc.us/ncadministrativ_/title15aenviron_/chapter19health_/default.htm

NC Court System (AOC forms)

<http://www.nccourts.org/>

NC Department of Correction Public Access Information System
http://webapps.doc.state.nc.us/apps/offender_servlets/search1

NC DMV
<https://edmv.dot.state.nc.us/DuplicateDriverLicense/Home>

NC DOC
<http://www.doc.state.nc.us/>

NC General Assembly
<http://www.ncga.state.nc.us/homePage.pl>

NC Police Agencies
<http://www.ncpolice.org/judicial.htm>

NC Resource Links
<http://www.ncgg.org/government/ncgov.htm>

NC State Agencies
http://www.ncgov.com/ncagency/agency_list.asp

NC State Bar
<http://www.ncbar.com/index.asp>

SBI
<http://sbi.jus.state.nc.us/>

MECKLENBURG COUNTY SOURCES

Charlotte City Code
<http://livepublish.municode.com/LivePublish/newonlinecodes.asp?infobase=10112>

CMPD
<http://www.charmeck.org/Departments/police/>

Mecklenburg County Bar
<http://www.meckbar.org/index.cfm>

Mecklenburg County Jail Inmate Query
<http://mcmf.co.mecklenburg.nc.us:3007/cjj|01w/cwba/webnull>

Mecklenburg County Register of Deeds
<http://meckrod.hartic.com/default.asp>