

## Case Law Update for Misdemeanor Attorneys

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### Pleadings

*In re S.R.S.*, \_\_\_ N.C. App. \_\_\_, 636 S.E.2d 277 (2006): Where the juvenile was accused of threatening to bring a gun to school to kill the teacher's daughter, the petition for communicating threats was not fatally defective where it alleged that the juvenile threatened to physically injure the person and damage the property of the teacher. While the threat was not to the teacher or to the teacher's property, the court held that any confusion was cleared up by the second paragraph of the petition, which laid out the threat verbatim and correctly named the victim. Also, the statute was correctly cited.

*State v. Teel*, \_\_\_ N.C. App. \_\_\_, 637 S.E.2d 288 (2006): Pleading for speeding to elude arrest does not have to allege what duty the officer was lawfully performing. The court distinguished *State v. Ellis*, 168 N.C. App. 651 (2005) (an indictment for resist, delay obstruct is fatally defective where it does not describe the duty the officer was discharging) and noted that *Ellis* is still good law.

### Search & Seizure

*State v. Bowden*, \_\_\_ N.C. App. \_\_\_, 630 S.E.2d 208 (2006): Officer was justified in pursuing and stopping the defendant's vehicle where the defendant: 1) eluded a checkpoint by braking hard when it came into view and making an abrupt turn into an apartment complex, 2) backed into a parking space, and 3) left the parking space and traveled towards the parking lot exit, but drove into another parking space as the patrol car approached. The court assumed for the sake of argument but did not decide that the officer's actions of turning on his blue lights and parking so as to block the defendant's vehicle constituted a stop.

*State v. Ivey*, 360 N.C. 562, 633 S.E.2d 459 (2006): Vehicle stop was unlawful where the defendant made a complete stop at a stop sign at a T-intersection and then made a right turn without using a turn signal. A concrete median blocked a left turn so there was no choice but to turn right. The evidence did not show that any vehicle or pedestrian was affected by the turn. Note the Court's use of the probable cause standard for vehicle stops. This case is also noteworthy for language disapproving "driving while black" based seizures.

*State v. Euceda-Valle*, \_\_\_ N.C. App. \_\_\_, 641 S.E.2d 858 (2007): After writing and delivering a warning ticket to defendant for speeding, the officer had reasonable suspicion to detain the defendant so that a drug dog could sniff the outside of his car where the defendant and his passenger appeared nervous, defendant avoided eye contact with the officer, a strong smell of air freshener was coming from the car, the car was not

registered to defendant or his passenger, and defendant and his passenger gave differing accounts of where they were going in Virginia.

### **Admissions**

*In re W.R.*, \_\_ N.C. App. \_\_, 634 S.E.2d 923, *temporary stay allowed by* 360 N.C. 647, 637 S.E.2d 544 (2006): Juvenile was in custody where he was repeatedly questioned over thirty minutes in the assistant principal's office by (at varying times) the principal, assistant principal and school resource officer. *Miranda* and juvenile statutory warnings were therefore required.

*In re A.W.*, \_\_ N.C. App. \_\_, 641 S.E.2d 354 (2007): Where juvenile completed a transcript of admission, but the trial judge did not orally address the juvenile regarding two of the six matters set out in 7B-2407(a) (when admission by juvenile may be accepted), the adjudication of delinquency had to be set aside because it was not clear that the admission was a product of the juvenile's informed choice. *But see In re D.J.M.*, \_\_ N.C. App. \_\_, 638 S.E.2d 610 (2007) (holding that 7B-2407 does not apply when juvenile admits s/he violated probation).

### **Trial**

*State v. Ferebee*, \_\_ N.C. App. \_\_, 630 S.E.2d 460 (2006): In trial for resist, delay, or obstruct a public officer, testimony by a security guard that a campus police officer (who did not testify) had yelled to the defendant, "Campus police officer, stop," was not testimonial under *Crawford v. Washington* because the statement was not made for the purpose of establishing in court that the defendant resisted, but was instead made for the purpose of attempting to apprehend the defendant in furtherance of the officer's duties.

*State v. Ballard*, \_\_ N.C. App. \_\_, 638 S.E.2d 474 (2006): At the close of the State's evidence, the prosecutor told defense counsel that one of defense counsel's other clients, Turner, had revealed exculpatory information about the defendant and was therefore a potential witness in the case. Defense counsel stated that he would not call Turner as a witness because Turner's testimony could implicate Turner in other criminal matters. The defendant said he wanted to keep defense counsel but also wanted Turner to testify on his behalf. The trial court denied defense counsel's motion to withdraw and said that defense counsel was not prohibited from calling Turner as a witness. The Court of Appeals held that the defendant did not knowingly and voluntarily waive his right to conflict-free representation and was entitled to a new trial.

*State v. Mims*, \_\_ N.C. App. \_\_, 637 S.E.2d 244 (2006): Where the prosecutor brought to the court's attention a potential conflict of interest (that both the defendant and the co-defendant were represented by defense counsel's firm) the trial judge erred in not conducting a hearing to determine whether there was a conflict. The Court of Appeals remanded for a hearing to determine whether an actual conflict of interest existed such that the defendant was denied the right to counsel.

*State v. Browning*, \_\_ N.C. App. \_\_, 629 S.E.2d 299 (2006): The trial court did not err in allowing the prosecutor to impeach the defendant by cross-examining him about false statements to the police concerning an offense that had been the subject of a deferred prosecution agreement. The Court of Appeals held that this questioning did not violate Rule 609(c) which prohibits the use of a conviction for which a person has been pardoned. Instead, the questioning fell under Rule 608(b) which allows inquiry into specific acts that tend to prove the witness' character for truthfulness or untruthfulness.

*State v. Williams*, 361 N.C. 78, 637 S.E.2d 523 (2006): Trial judge abused his discretion in allowing the defendant and counsel only five minutes to decide whether to present evidence in a first-degree murder case.

*State v. Taylor*, \_\_ N.C. App. \_\_, 632 S.E.2d 218 (2006): Transcripts of text messages sent and received by the prosecuting witness's cell phone were properly authenticated where two Nextel employees testified as to how the messages were sent, received stored and retrieved. Also, the content of the text messages tended to show that the prosecuting witness was the person who had sent and received them.

### **Criminal Offenses**

*In re B.C.D.*, \_\_ N.C. App. \_\_, 629 S.E.2d 617 (2006): There was sufficient evidence of ethnic intimidation where the juvenile sent an email to the assistant principal, who was African American, using a racial epithet to describe the assistant principal and telling her if she ever suspended anyone for using that racial epithet, the KKK would show up on her door step. The assistant principal had previously suspended the juvenile for using racial slurs on the school bus.

*State v. Ferebee*, \_\_ N.C. App. \_\_, 630 S.E.2d 460 (2006): Duke University campus police officer was a "public officer" for purposes of a resist, delay or obstruct public officer charge. The court noted that campus police officers have the authority to arrest under N.C. Gen.Stat. § 74G-6(b).

*State v. Harris*, \_\_ N.C. App. \_\_, 632 S.E.2d 534 (2006): Defendant's positive urine test for marijuana was by itself insufficient to prove possession of marijuana. The court pointed to the lack of evidence that the drug had been knowingly and voluntarily ingested. Note: NC Supreme Court has granted the State's petition to review the ruling.

*In re B.N.S.*, \_\_ N.C. App. \_\_, 641 S.E.2d 411 (2007): A closed pocketknife with a blade 2.5 inches long counted as a weapon for possession of weapon on school grounds.

*State v. Barksdale*, \_\_ N.C. App. \_\_, 638 S.E.2d 579 (2007): There was sufficient evidence of assault with a deadly weapon on law enforcement officer where the defendant, who had been tackled and whose right wrist had already been handcuffed, appeared to be reaching for a gun on the ground about six inches from his left hand.

*State v. Brooks*, \_\_ N.C. App. \_\_, 631 S.E.2d 54 (2006): There was sufficient evidence of breaking and entering where the defendant entered the reception area of a law office that was open to the public but later entered one of the lawyer's offices without permission.

## **Probation**

*State v. Bryant*, 361 N.C. 100, 637 S.E.2d 532 (2006): The trial court did not have jurisdiction to revoke the defendant's probation when the hearing was conducted after the probationary period had ended and the judge did not make findings that the State had made a reasonable effort to notify the probationer and to conduct the hearing earlier.

*State v. Henderson*, \_\_ N.C. App. \_\_, 632 S.E.2d 818 (2006): The defendant's probation was set to end in 31 days when the defendant got a new charge, tolling the period of probation. Once the new charge was resolved, the court had 31 days to modify or revoke, but failed to do so within this time period and lost jurisdiction. Also, the State had not complied with 15A-1344(f), requiring a written motion and reasonable effort to notify probationer and to hold the hearing earlier in order to revoke probation once the probationary period has expired.

## **Sentencing**

*In re S.R.S.*, \_\_ N.C. App. \_\_, 636 S.E.2d 277 (2006): The following conditions of special probation were reversed because they were impermissible delegations of the trial judge's authority to the court counselor: 1) the juvenile must cooperate with any out-of-home placement if deemed necessary or if arranged by the court counselor, including but not limited to wilderness camp; 2) the juvenile must cooperate with any counseling recommended by the court counselor and comply with any assessment recommended by the court counselor.

*State v. McQueen*, \_\_ N.C. App. \_\_, 639 S.E.2d 131 (2007), *temporary stay allowed by* \_\_ S.E.2d \_\_, 2007 WL 1101191 (N.C. Apr 05, 2007): While the judge committed *Blakely* error by finding two aggravating factors in a DWI sentencing hearing rather than submitting them to the jury, the error was harmless because there was overwhelming evidence of the two aggravating factors (accident causing personal injury and property damage over \$500.00).

*State v. West*, \_\_ N.C. App. \_\_, 638 S.E.2d 508 (2006): The defendant was convicted of multiple charges and was sentenced on some of the charges prior to the lunch recess. After lunch, the trial court erroneously used the morning convictions in calculating the defendant's prior record level for sentencing on the remaining charges. It is unlawful to count one conviction in determining the prior record level for another conviction when the convictions resulted from a single trial.