

SELECTED BARS AND DEFENSES IN MISDEMEANOR CASES

STATUTE OF LIMITATIONS

- SOL is 2 years for misdemeanors. GS 15-1.
 - Begins to run when crime is completed. 258 NC 533.
 - State must issue valid criminal process within the 2 years. 272 NC 491.
 - Void warrant does not toll statute. 140 NCA 600.
- Defense is waived if:
 - D fails to raise it. 133 NC 709; 222 NC 28.
 - D pleads guilty. 193 NC 747.
- **Exceptions:**
 - Where valid warrant is issued within SOL, D is convicted in district court, and D appeals, D can be tried in Superior Court on the original warrant more than 2 years after the offense. 244 NC 68.
 - Defective *indictment* (not warrant) charging a misdemeanor can be refiled within one year of dismissal. GS 15-1, 140 NCA 600.

LACK OF JURISDICTION

- NC has jurisdiction if any part of offense took place in state. 15A-134.
- Where jurisdiction is challenged, State has burden to prove beyond reasonable doubt. 342 NC 91.

FAILURE OF PROOF

- State fails to put on substantial evidence of each element of the charge and of D's identity as the perpetrator. 299 NC 95.
 - Remedy is nonsuit/dismissal. GS 15-173; 15A-1227.
 - Motion should be allowed where evidence raises only suspicion or conjecture. 318 NC 102.
 - Timing of motion in district court:
 - At close of State's evidence
 - At close of all evidence.
- Fatal Variance-State's proof at trial is different from what is alleged in pleading, resulting in insufficient evidence of offense alleged. 297 NC 100.
 - Remedy is dismissal. 15A-952. (See Pleadings Checklist.)

DOUBLE JEOPARDY

- No person shall be put in jeopardy twice for the same offense. US Const. 5th Am; NC Const. Art. I Sec. 19.
 - D is put in jeopardy when the trial begins, meaning the first evidence is presented or the first witness is sworn in. 327 NC 244.
- Double Jeopardy rules bar:
 - Reprosecution for same offense following acquittal,
 - Reprosecution for same offense following conviction, and
 - Multiple punishments for same offense, absent clear legislative intent that multiple punishments allowed. 459 US 359; 159 NCA 103.
- Same evidence test: All elements of one offense included in other offense. 287 NC 207.

SELF-DEFENSE

- May use non-deadly force against another when the amount of force reasonably appears necessary to protect self from offensive contact or injury. 230 NC 54.
 - May not continue to use force after need has disappeared. 252 NC 57.
 - May not assert defense if, without justification, voluntarily entered or remained in fight. 228 NC 228.
 - But, if D withdraws from fight, can regain right. 293 NC 353.
 - Brandishing weapon may constitute non-deadly force. 74 NC 244; 252 NC 57.
- Burden of Persuasion: State must prove beyond reasonable doubt that D did not act in self defense. 268 NC 140.
- Applicability to Resist/Delay/Obstruct and Assault on Officer: Citizen has right to use reasonable force to resist unlawful conduct by officer. 1 NCA 479.

DEFENSE OF OTHERS

- “Stand in shoes” of person attacked
 - May use force to protect 3d person where reasonably believe 3d person would have been justified in using force. 265 NC 312; 337 NC 615.
 - D clearly has right to defend family members and others with whom D has special relationship and probably has right to defend “strangers.” 194 NC 34; 332 NC 639.

DEFENSE OF PROPERTY

- May use degree of force believed necessary to prevent or end forcible entry into home. GS 14-51.1.
- May use reasonable, non-deadly force to protect property. 258 NC 44.

DURESS/NECESSITY

- D must show took reasonable action to protect life, limb, or health and no other acceptable choice was available. 167 NCA 705.
 - Defense is available in DWI trials. 167 NCA 705.

ACCIDENT

- D injures another person unintentionally.
 - State has burden to show injury was not accidental. 330 NC 249.

ENTRAPMENT

- D is not guilty if officer tricked or persuaded D to commit offense that D would not otherwise have committed. 307 NC 1.
 - Defense is available in DWI trials. 164 NCA 658.
- D must show entrapped to satisfaction of finder of fact. 307 NC 1.

UNCONSCIOUSNESS/AUTOMATISM

- D could not physically control acts.
 - ie, epilepsy, blow to head, fever, sleepwalking or involuntary intoxication..
- D has burden to prove to satisfaction of finder of fact. 287 NC 266.

IGNORANCE/MISTAKE

- Mistake of fact is defense to crimes requiring knowledge. 232 NC 77; 290 NC 266.
 - Where D drives while license suspended without notice of suspension, case should be dismissed. 290 NC 266.
- State has burden of showing D had required knowledge.
 - Depending on definition of offense, State may meet burden by showing D knew or had reason to know of fact.

INVOLUNTARY INTOXICATION

- D is forced to drink alcohol/ingest drug, or does so unknowingly. 173 NCA 600.
- Defense does not arise where D knows he is ingesting the substance, but does not know it is intoxicating.
 - Defense was not available in DWI case where D drove home from dentist impaired by pain medication. 173 NCA 600.

DIMINISHED CAPACITY

- D could not form the specific intent to commit the offense because of an emotional or mental condition. 322 NC 243.
 - Defense is only available for crimes that require specific intent, such as larceny or an attempt to commit a crime.
- State has burden to show D was capable of forming specific intent.

VOLUNTARY INTOXICATION

- D was voluntarily intoxicated to a degree that D could not form the specific intent to commit the offense. 304 NC 511.
 - Defense is only available for crimes that require specific intent, such as larceny or an attempt.
 - State has burden to show D could form specific intent. 323 NC 339.