



If April Showers Bring May Flowers,
Bring on the Rain!



We hope you are taking time to enjoy another beautiful Spring here in the Carolinas. Isn't it nice to walk outside at 6:30 without a flashlight? The frogs are at full volume, kids want to stay out playing until the sun goes down, and all seems right as rain, which of course we should be getting our fair share of very soon. Here are a few issues to contemplate during the evening hours while sitting out on your porch enjoying our beautiful southern spring!

- **Drivers Beware if You Borrow a Friend's Car**
Contributed By Allen C. Brotherton



The Fourth Amendment to the United States Constitution has been interpreted to require that certain police actions (such as stopping a motor vehicle) be justified by what the courts have termed “reasonable suspicion of criminal activity.” It is difficult to define, but falls somewhere between a mere inchoate hunch and the full-blown “probable cause” required for an arrest or search. I am often amazed at how low the bar is drawn by our appellate courts for such an important protection of our freedom.

For example, a few years ago our court of appeals ruled that, because the registered owner of a motor vehicle had a revoked driver license, a police officer was allowed to assume that the person driving the vehicle was the owner to support a claim of reasonable suspicion. (*State v. Hess*, 185 N.C. App. 530). Not surprisingly, following this decision it has become the routine practice of police to cruise the streets running the tag number of any car they choose to determine the owner, then checking the status of the owner's license, and stopping any vehicle whose owner is revoked. (If you borrow a friend's car, make sure their license is in good standing or be prepared to be pulled over at any time.)

In the most recent assessment in this area, *State v. Fisher*, decided March 20, 2012, the court of appeals once again approves the police action by applying a very low standard. However, it is interesting because the court at least draws some limits on the factors police may plausibly use to establish reasonable suspicion.

In *Fisher*, the officer stopped defendant for a seat belt violation, but then held defendant for 20-25 minutes to have a canine unit brought to the scene for a drug sniff of defendant's car. As the court has held before, this extended seizure required a showing of reasonable suspicion to be constitutionally permissible. In addition to other factors the court ultimately found sufficient (defendant having pending drug charges and being a known drug distributor in another county,

defendant's nervousness, inconsistent travel explanation), the State argued the following facts to support the officer's suspicion of drug activity:

1. The car was registered to someone other than defendant.
2. There was an odor of air freshener in the car.
3. Defendant was driving in a pack of cars, with the flow of traffic.
4. There was a handprint on the trunk which was otherwise dirty, indicating something had recently been placed in the trunk.
5. There was a fast food bag in the car, indicating the person was in a hurry and did not want to leave the car unattended.

So which of these do you think the court found appropriate factors, and which do you think were seen as not proper? Answer: 1 and 2 were held to (somehow) support reasonable suspicion but 3, 4, and 5 were too innocent for even our prosecution-oriented court.

Bottom line: if you don't want to be searched when you're stopped for a traffic ticket, then, while you don't have to wash the car and you can eat via drive-thru, you should drive your own car and lose the air freshener.



• What the Law Says About Cell Phone Usage by Drivers Under the Age of 18

Contributed By Brad Champion

For those of you who are unaware, since December 1, 2006, it has been illegal for a person under the age of 18 to use a mobile phone while operating a motor vehicle on a public road in North Carolina, regardless of whether the phone is hands free. However, there are exceptions and other peculiarities to this law worth reviewing so that you or your children know exactly what may and may *not* be legal.

First, the definitions: Along with prohibiting the use of a “mobile telephone” in certain circumstances, this law prohibits the use of “additional technology,” which includes any device that provides access to digital media such as a camera, electronic mail, music, the internet or games. N.C.G.S. §20-137.3 (a)(1). Use of “wireless telephone services” is also prohibited, which includes a service that is a two-way real time voice telecommunications service. N.C.G.S. §20-137.3 (a)(3). The definition of a mobile telephone is technical, as you might expect, but it also prohibits the use of hands free devices. A “mobile telephone,” is defined as a “device used by subscribers and other users of wireless telephone service to access the service.” N.C.G.S. §20-137.3 (a)(2). The definition includes a “device that has an internal feature or function, or that is equipped with an attachment or addition, whether or not a permanent part of the mobile telephone, by which a user engages in a call without the use of either hand, whether or not the use of either hand is necessary to activate, deactivate, or initiate a function of such telephone.” N.C.G.S. §20-137.3 (a)(2). Sorry, no hands free use.

The offense: Essentially, violation of this new law involves a person under the age of 18 years operating a motor vehicle using a “mobile telephone” or any “additional technology” associated with a mobile telephone while the vehicle is in motion. N.C.G.S. §20-137.3 (b).

However the statute declares that the prohibition shall *not* apply to the use of a mobile telephone or additional technology in a *stationary* vehicle.

N.C.G.S. §20-137.3 (b).

Of course, there are exceptions: Use of a mobile telephone is allowed when it is for the sole purpose of communicating with the minor's parent, legal guardian or spouse, *OR* regarding an emergency situation while communicating with a hospital, physician's office, health clinic; ambulance service; fire department or law enforcement agency. N.C.G.S. §20-137.3 (d).

The penalty: The statute expressly states that it does not authorize seizure of a mobile telephone or additional technology, only that any person violating the statute commits an infraction and must pay a twenty five (\$25.00) dollar fine. N.C.G.S. §20-137.3 (c). No drivers license points, insurance surcharge or court costs will be assessed for violation.

- **Don't Fall Victim to International Roaming Fees On Your Smartphone**

Are you planning on traveling outside of the continental United States any time soon? If you are like some, you don't think about roaming fees that could be assessed by your cell phone carrier while traveling. And if you don't, you may be in for a surprise when you get your next cell phone bill. Did you know that you can be billed for roaming fees even if you don't use your phone?



Some of us have already found out the hard way... we have opened our bill expecting nothing out of the ordinary...then after the initial wave of nausea washes over us after we see the amount beside of TOTAL AMOUNT DUE, we experience both confusion and shock and continue to examine and re-examine all charges listed on the cell phone bill. But it doesn't take long before confusion turns into rage and then... the odious phone call to your carrier's 24/7 customer service hotline...

And then after suffering through the automated menu, finally you are able to speak to that first tier customer service representative who is simply not sensitive to your current (albeit irrational) state of mind. And of course at this point, nothing and no one can mollify you.

So here is the skinny according to Wendy Kaufman of National Public Radio:

If someone calls you while you are traveling and your Smartphone is on but you do not answer, the unanswered call is eventually re-routed to your local carrier who charges you for

forwarding the call and you could end up paying almost 5x times your regular rate per minute depending on your provider and location. If the caller leaves a voicemail, you could pay even more! But there have been reports of this occurring even if your phone is turned OFF through your trip. Even if your Smartphone is turned off, your phone is still actually working behind the scenes accepting incoming emails, updating applications you have downloaded to your phone, checking your location, etc. and these tasks will cost you more if you are outside of the country.

Here are some tips to avoid “bill shock”:

- You can disable your Smartphone’s roaming function
- You can contact your carrier to advise of your travel plans so that the company can explain its policy regarding international fees allowing you to act and plan accordingly.
- Purchase a pre-paid phone once you arrive at your destination
- Use Wi-Fi instead of a carrier’s network

Or you can always simply disconnect from the outside world by leaving all of your electronic devices at home on your next vacation and relax with your family and friends enjoying the peace and quiet that comes from a world with no email/texts/phone calls.

- **Safe and Secure**
Contributed By Frances Knox



I recently attended a security class for females. Some of the pointers we learned were well worth sharing with our clients.

If Attacked:

- The most vulnerable place on the attacker’s body is the eyes. Try your best to gouge them out with your thumbs.
- The second most vulnerable area is the nose. Use your hand like a hammer and hit the bridge of the nose with all your might.
- The third are the ears. Rip one off and take it home with you.

- The fourth is the Adam's apple. Hit it with all of the force you are able to muster.
- Lastly, females can always aim a direct knee to the groin area of a male attacker.

Always listen to your inner voice if you feel suspicious of someone around you. You are usually correct. Stay in lighted areas, call for help, have your pepper spray or wasp spray ready to aim. Purchase a gun and go through the proper steps to learn to shoot it and have your permit. If you are afraid of guns, buy a cubaton (small night stick) and hold it as a weapon.

Reminders we forget:

- Lock your car doors
- When stopping in traffic, leave a car length ahead of you to make a get-away
- Keep your doors locked at home and your garage door down
- Do not open your door unless you know and can see who is there
- Keep your keys by your bed so you can hit the panic button
- Alarm your security system
- When in a shopping parking lot, keep your hands free – your keys in your hand – do not get on your cell phone and look around you.
- Never walk close to cars, but stay in the center area so no one can jump out at you.
- Carry a loud whistle on your key chain.
- Never stop beside the road to help a broken-down vehicle – call for help.



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Our Senior Managing Partner and Mentor: Eddie Knox

Haden Edward Knox



This month's featured attorney is our Senior Managing Partner, H. Edward "Eddie" Knox. Everyone should be familiar with our beloved former Charlotte Mayor and State Senator. He is loved by his peers in the legal field, as well as his employees and his clients. He is never too busy to take a moment to speak with his clients when they call. Eddie has tried a countless number of cases over his 40 years of practice and his clients keep coming back to him because of his success in the courtroom. They also love his charismatic and personable demeanor. No case is too small for Eddie and if you ask him about trying your case in court, he will respond "I will try it; I will try anything".



Although Eddie divides his time between the Charlotte and Denver offices, he does find time to relax on occasion and enjoys playing golf at his golf course, Verdict Ridge, which he built from the ground up and where he now lives with his wife and partner, Frances Knox. Eddie also sings in a gospel quartet, "Witness", and performs when asked. If you would like to hear him sing, just let him know and he will pass along one of the quartet's CDs to you or advise you of where he may be singing next.

Eddie is a Board Certified Trial Specialist with the National Board of Trial Advocacy and was chosen by North Carolina attorneys and recognized by *Business North Carolina* magazine as a Legal Elite in 2003, 2005, and 2006. Eddie has an AV rating by Martindale-Hubbell, which is a "very high to preeminent" rating among his peers (click on the video icon above to watch the video explaining the selection process for this high honor). He is also the recipient of the Super Lawyers Award for 2006 - 2012. In 2008, Eddie was inducted into the General Practice Hall of Fame by the North Carolina Bar Association. Eddie has also been named for the 6th year in a row to the Top 100 Trial Lawyers of North Carolina.

Year after year, Eddie continues to be recognized in the legal field by both his peers and by professional associations for his outstanding reputation and his lengthy track record of success. We at the Knox Law Center like to think of him as not only a highly successful and revered attorney, but as a friend.

Thank you for taking the time to read the Spring edition of our Newsletter. If you have any topics about which you would like to read, legal or otherwise, please feel free to send an email to knoxbrotherton@knoxlawcenter.com.

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