14.5 Substantial Violations of Criminal Procedure Act

A. Required Showing

In addition to the above constitutional suppression issues, a defendant may move to suppress evidence that was obtained as a result of a "substantial" violation of the Criminal Procedure Act. In determining whether a violation is substantial, the court must weigh the following four factors:

1. the importance of the particular interest violated;
2. the extent of the deviation from lawful conduct;
3. the extent to which the violation was willful; and
4. the extent to which exclusion will tend to deter future violations of the Criminal Procedure Act.

See G.S. 15A-974(a)(2). In 2011, the N.C. General Assembly created a good faith exception to the exclusionary rule for statutory violations, providing that evidence obtained as a result of a substantial violation will not be suppressed if the person had an objectively reasonable, good faith belief that his or her actions were lawful. For additional discussion of this exception, see *supra* "Good faith exception for constitutional violations not valid in North Carolina" in § 14.2B, Search Warrants (discussing constitutional and statutory issues).

While G.S. 15A-974 refers specifically to violations of the Criminal Procedure Act—that is, G.S. Chapter 15A—the North Carolina courts have recognized that suppression may be the appropriate remedy for other statutory violations, such as violations of G.S. Chapter 20, Motor Vehicles. *See, e.g.,* Shea Denning, *Can I Get a Remedy? Suppression of Chemical Analyses in Implied Consent Cases for Statutory Violations*, N.C. CRIM. L., UNC SCH. OF GOV'T BLOG (Nov. 4, 2010) (observing that the North Carolina appellate courts have suppressed chemical analysis results based on violations of Chapter 20).

B. Case Summaries on "Substantial Violations"

In the following cases the courts addressed whether the defendant had made a sufficient showing of a statutory violation to warrant suppression.

State v. Pearson, 356 N.C. 22 (2002) (no substantial violation where officer failed to provide defendant a copy of test results following nontestimonial identification procedure

and failed to return an inventory of seized evidence to judge who issued order for procedure)

State v. Wallace, 351 N.C. 481 (2000) (confession admissible despite delay of 19 hours in taking defendant to magistrate for initial appearance; interrogating officer had read suspect *Miranda* rights before questioning)

State v. Hyleman, 324 N.C. 506 (1989) (bare bones search warrant, where allegations of fact failed to comply with requirements of G.S. 15A-244(3), constituted substantial violation of Criminal Procedure Act requiring suppression of evidence seized in search)

State v. Satterfield, 300 N.C. 621 (1980) (failure to remind defendant of right to counsel at nontestimonial identification procedure did not require suppression of identification evidence, although statements made by defendant had to be suppressed)

State v. Downey, 249 N.C. App. 415 (2016) (failure to provide inventory of items seized during search in violation of G.S. 15A-254 did not require suppression; evidence was not seized as a result of a substantial statutory violation)

State v. Portillo, 247 N.C. App. 834, 849 (2016) (three-day delay in presenting the defendant to a judicial official in violation of G.S. 15A-501 was a mere "technical" violation and did not require suppression)

State v. White, 232 N.C. App. 296 (2014) (lack of written checkpoint policy in violation of G.S. 20-16.3A was a substantial violation requiring suppression)

State v. Caudill, 227 N.C. App. 119 (2013) (trial court did not err by denying defendant's motion to suppress statements to officers on grounds that they were obtained in violation of G.S. 15A-501(2), which requires that arrested person be taken before a judicial official without unnecessary delay; delay was not unnecessary and there was no causal relationship between delay and defendant's statements)

State v. Scruggs, 209 N.C. App. 725 (2011) (even if stop and arrest of defendant by campus police officers while off campus violated G.S. 15A-402(f), violation was not substantial; stop and arrest were constitutional and officers were acting under mutual aid agreement with municipality; court cites other cases in which officers were acting just outside territorial jurisdiction and substantial statutory violation was not found)

State v. White, 184 N.C. App. 519 (2007) (G.S. 15A-974(2) did not require suppression of evidence obtained after officers performed unlawful forced entry of residence to execute search warrant because evidence was not discovered as a result of unlawful entry)

State v. McHone, 158 N.C. App. 117 (2003) (suppression required where search warrant issued on the basis of inadequate affidavit that merely concluded probable cause existed, constituting a substantial violation of G.S. 15A-244)

State v. Sumpter, 150 N.C. App. 431 (2002) (no substantial violation under circumstances where officer, in executing search warrant, failed to announce presence before entering residence)

State v. Davidson, 131 N.C. App. 276 (1998) (no substantial violation where search warrant for bank records was served within 48 hours but records were not delivered to officer until after 48 hours had passed)

State v. Pearson, 131 N.C. App. 315 (1998) (no substantial violation of Criminal Procedure Act where officer administered breathalyzer test outside of his territorial jurisdiction [G.S. 20-38.2 now permits officers who are investigating an implied-consent offense or a vehicle crash that occurred in the officer's territorial jurisdiction to investigate and seek evidence of the driver's impairment outside the officer's territorial jurisdiction])

State v. Harris, 43 N.C. App. 346 (1979) (no substantial violation where Stokes County deputy saw murder suspect driving just over county line in Forsyth county and made stop)