

The Law On Brouhahas:¹
Disorderly Conduct, “Your Mama,” and Fighting
Words
Legal Question of The Week
Vol. 2, Number 17
July 31, 2009

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Before we get into our “real” topic for the week, let’s take care of a housekeeping matter. For those of you who carefully read all of my legal updates, I am sure that you both are anticipating the results of the “Think of a Better Name for a Strip Search” contest announced in this space two weeks ago.² I am pleased to say that we had several good entries and it was hard to choose a winner, yada yada yada, but the winner is High Point Police Officer (and Interdiction Guru) Andrew Lanier who suggested the term “Peek-a-boo Search.”³ Our Records Supervisor, Linda Hodgson, was a close second with “Dangle Search”⁴ and Special Investigations Captain Tony Hamrick wins an honorary mention for submitting seven (7) possibilities including the “Semi-bare Search.” Andrew is the proud recipient of 100 points from the legal office.⁵

In other news, High Point officers will be pleased to learn that an important piece of legislation was recently passed that should make your jobs a little easier. Venue is a legal term that expresses where a particular crime may be tried. Generally in North Carolina, venue is said to “lie” in the particular county where an offense occurred. If part of the offense occurred in more than one county, each one of those counties would have concurrent venue, meaning the case could be tried in any of those counties.

¹ HPPD’s very own Lee Hunt suggested the topic for this week and challenged, even dared, me to use the word “brouhaha” in this week’s update. To him, I respond by pointing out that I not only used it in the update, I put it in the TITLE. Ka-boom.

² Those of you who don’t know what I am talking about are the same folks who lived blissfully ignorant of the fact that for about three months we couldn’t charge people with violating an ex parte domestic violence protective order. But you probably aren’t reading this either, so it would be a waste of time to explain.

³ Remember that the idea was to have a euphemistic name that sounded much more benign than a “strip search.” What could be more benign than a carefree game of peek-a-boo?

⁴ This might have won except it brought up too many bad mental images – I’m not sure exactly what’s supposed to be dangling...

⁵ Void where prohibited. Not valid on days that end with the letter “y.” Must be over 18 or have an adult’s permission. Not valid with any other legal office offer. Redeemable for cash at the rate of 1/100 of a cent. No purchase necessary. For a copy of all rules, send a self-addressed stamped envelope filled with large bills of good and lawful U.S. Currency to the legal office.

Unfortunately, that posed big problems for the City of High Point because due to the magic of annexation, High Point actually extends into four different counties. Under North Carolina venue rules, that meant that when someone was charged in the city limits of High Point but in, for example, Forsyth County, that case would have to be heard in Winston-Salem, requiring the officer to have to attend court there when they could be out on the streets catching bad guys. However, there was a possible fix: the Chief District Court Judges in each county and the Clerks of Superior Court in each county could sign a written agreement to allow all of those cases to come back to one county. This fix works fine in those areas of the state where only two counties are affected, but since High Point is not only in four counties, but four different judicial districts, such an agreement would require the signatures of eight people.⁶ In addition, each time one of those people was replaced the process would have to start again.

Enter House Bill 1077, entitled “Venue/Municipalities in Multiple Districts.”⁷ This law, which goes into effect on December 1, 2009, states that “for charges brought by municipal law enforcement officers only,⁸ if the corporate limits of the municipality extend into four or more counties, each of which is in a separate district court district,⁹ offenses arising in a portion of the municipality in which a minority of the voters reside¹⁰ shall be disposed of in the portion of the municipality in which a majority of voters reside.”¹¹ This means that, starting December 1, 2009, all charges made by High Point Police officers in those areas of the city outside Guilford County will be handled in High Point. This applies to felonies, misdemeanors, and infractions. It does not apply to things other than criminal charges – the rules concerning things like search warrants and obtaining 50B domestic violence protective orders will remain the same.¹²

This legislation was introduced and championed by Representative Laura Wiley. If you have occasion to speak with her or see her, you should thank her for her work on your behalf. This new law solves a longstanding problem and state of confusion and will be very advantageous to the High Point Police Department.

Now let’s consider this week’s topic by starting with a hypothetical question.¹³ Suppose you are called to the scene of a breaking and entering in progress. When you arrive, you observe through the screen door a red-headed man sitting in a recliner inside

⁶ And not just people, but people who hold elective office. In other words, politicians.

⁷ I would have called it “The Dangle Bill,” but that’s just me.

⁸ This means the sheriffs in those counties don’t have to come to High Point if they make charges in our city limits within their county.

⁹ Trivia question: Do you know how many municipalities in North Carolina extend into four or more counties, each of which is in a separate district court district? Answer: One – High Point. This part of the law will ONLY apply to High Point.

¹⁰ In other words, the areas of High Point outside Guilford County.

¹¹ In other words – the High Point Courthouse.

¹² Not clear on what those rules are? For search warrants, a magistrate can issue a search warrant only for places within their county. A Superior Court judge can issue a search warrant for anywhere in the state. For 50Bs, victims should generally apply for those orders in the county in which they live.

¹³ The legal office wants to say that the hypothetical question posed in this update is fictional and does not depict any actual person or event. Any similarity to real persons living or dead or teaching at Haahvard, is purely coincidental.

the living room of the house. You ask the man to step outside the house and he replies, “No, I will not” and demands to know who you are. You explain that you are a High Point Police officer and you are investigating a break in call at this address. The man then opens the door and says, “Why? Because I am a red-headed man in America?”¹⁴ The man continues to scream and yell and carry on in a generally obnoxious manner but you are able to confirm that he does indeed live at the house. You “thank” the man and turn to leave, but he follows you out into the front yard still carrying on about such things as “police harassment.” A crowd of neighbors is starting to gather and you warn the man several times that if he keeps it up, you are going to have to arrest him. He ignores your warnings and the brouhaha¹⁵ continues. What do you do?

First, we need to understand that every citizen has a right to criticize and question an officer’s actions. This is called the “mere remonstrance” rule and is grounded in our First Amendment rights to free speech. Further, merely speaking profanity to a law enforcement officer is constitutionally protected and does not by itself give rise to a criminal charge.

So let’s look at what charges are possible in this situation. I see two possibilities: Resist, Delay or Obstruct an Officer and Disorderly Conduct. To charge RDO, you are going to have to be able to show that you were kept from or delayed in performing an official duty. Under our facts the man’s statements, while obnoxious, did not actually impair your ability to do your job – they simply made it more unpleasant.

But consider in circumstances like this the North Carolina Court of Appeals case named State v. Burton.¹⁶ In Burton, an officer stopped the defendant for speeding and went back to his patrol car to run the vehicle’s registration. Burton followed the officer back to the patrol car and stood next to it at the driver’s side window while loudly protesting the officer’s stop. The language was so loud that it prevented the officer from being able to use his radio.

The officer asked Burton three times to go back to his car, but Burton refused to comply. Finally, the officer told Burton he would be arrested for obstructing and delaying if he did not return to his car. Burton refused and continued his loud and hostile yelling. The officer placed him under arrest and all the while Burton struggled against the officer.

The North Carolina Court of Appeals upheld the conviction, stating that although every citizen has the right to free speech; language that is so loud, hostile, and

¹⁴ I obviously didn’t feel like dealing with race today. I figured nobody likes red-haired men anyway so I was safe with this. Just kidding if you are a red-haired man.

¹⁵ I think “brouhaha” is a neat little word and fun to say (try it!). Brouhaha is from the French word “brouhaha” which is said to have been, in medieval theatre, “the cry of the devil disguised as clergy.” I don’t know what that means, but brouhaha means “a confused disturbance far greater than its cause merits.” Hubbub is also a fun word to use in these situations.

¹⁶ 108 N.C. App. 219 (1992). The great Ralph Strickland reminded me that he actually argued this case for the Attorney General’s office in the Court of Appeals. I was a sophomore in college at the time, but Ralph had already been practicing law for several decades.

uninterrupted that it keeps an officer from communicating with others on a necessary matter is not protected speech. In our hypothetical however, there is no allegation that the officer was not able to communicate with others as necessary to perform any duties.

Second, let's look at the possibility of a Disorderly Conduct charge. Under G.S. 14-288.4, it is a crime to cause a public disturbance by using abusive language that is intended to and "plainly likely to provoke violent retaliation and thereby cause a breach of the peace."¹⁷ "Public disturbance" is defined in 14-288.1(8) as "any annoying, disturbing, or alarming act or condition exceeding the bounds of social toleration normal for the time and place in question which occurs in a public place or which occurs in, affects persons in, or is likely to affect persons in a place to which the public or a substantial group has access." The definition also specifically includes "any neighborhood" so even though our red-headed man was on his own private property, he would probably in a "public place" under this statute since he was outside.

It is more uncertain as to whether his words were plainly likely to provoke violent retaliation. Again, a citizen has the right to criticize an officer and even use profanity towards them.¹⁸ You have often heard¹⁹ that officers should have a tougher skin than your average citizen and therefore should be less likely to retaliate violently in these situations. But the test here is whether it would provoke your average citizen to retaliate. In State v. Cunningham,²⁰ the defendant, who was being given a traffic ticket, told the officer to "get his g**d*** a\$\$ out of the way" or the defendant "would run over him." The court held that this language was sufficient for a conviction of disorderly conduct because even though an officer would be expected to show restraint, this statement could be found to be "fighting words" likely to provoke the average person to retaliation.

So whether you can charge this offense is going to depend a great deal on what was actually said. I have been very general in the above hypothetical, but if the worse thing the red-headed man said was that he would "speak to your mama outside" this would probably not be disorderly conduct, but if he made some sort of conditional threat or said something much nastier, you may very well be able to charge.

But your analysis should never end with "Can I charge?" Your next question should always be "Should I charge?"²¹ In cases like this, consider carefully whether you are better off ignoring the language than arresting the person. If you leave without charging, will the disturbance end or do you need to make the arrest to preserve the peace? If you charge and arrest, are you just prolonging your own agony by at the very least having to listen to the person's mouth all the way down to the magistrate's office?

¹⁷ G.S. 14-288.4 makes a lot of other things chargeable as Disorderly Conduct, such as fighting, disrupting students in school, or causing a public disturbance on a school bus, religious service, or funeral. We'll leave these for a later legal update.

¹⁸ Is this a great country, or what?

¹⁹ And you are going to hear this again in a few paragraphs – keep reading.

²⁰ 34 N.C. App. 72 (1977).

²¹ And remember that whether right or wrong, your decision might win you a trip to Washington and a beer with the President of the United States.

The bottom line many times is that you are indeed expected to have a tougher skin than your average citizen and you are better off in many instances to ignore this type of thing. In our hypothetical, the red-headed man is on his own property and most likely will just go back into the house after you leave the scene. Serving your pride, or “saving face,” or teaching an obnoxious person a lesson are generally bad reasons to make a charge or an arrest.²²

And I have found that in most cases, people (whether officers or civilians) tend to reap what they sow with regards to interpersonal conflict. No matter how polite and kind you are, you are occasionally going to encounter someone who is extremely mouthy and obnoxious, but if you are finding yourself having to deal with hostile attitudes constantly, it might be a good idea to evaluate what type of attitude you are projecting to the people you come into contact with. Good character and courtesy help win lawsuits and don't cost you a thing. To paraphrase the late²³ Michael Jackson, I'm starting with the red-headed man in the mirror.

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²² In all seriousness, I want to pause here and make it clear again that I am not commenting on whether Officer Crowley should have arrested Professor Gates. I don't know exactly what happened there and it would be acting “stupidly” to render an opinion on the officer's actions. Ok – that last phrase was somewhat of a joke.

²³ Had you heard about this? Michael Jackson is dead. Apparently it happened some time ago. I wonder why it hasn't been on the news every single day since his passing?