

The Law On Gunslinging:<sup>1</sup>  
Openly Carrying In North Carolina  
Legal Question of The Week  
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Let's jump right in to today's legal update with that friend of friend of teachers, professors, philosophers and legal advisers: The Hypothetical Question. Three of them, in fact.

#1: Suppose you (a well-trained and observant law enforcement officer) are riding around town and drive by the bank. You see, much to your surprise, a man getting out of a vehicle with a gun in a holster strapped to his waist. It is obvious to you that he is not a law enforcement officer. He starts walking toward the bank entrance. What do you do? Has a crime been committed already? Will it be a crime the moment he enters the bank with a gun? Was a fourth judge really an improvement on American Idol?

#2: You are called to Wal-Mart by the store manager who tells you in a very agitated manner that there is a man in the electronics section who is openly carrying a gun in a drop down leg holster. The manager wants you to arrest him immediately. There are no signs concerning guns posted at the entrance to the Wal-Mart. What do you do? Can you make an arrest? Are the Yankees really as bad as they look this year?

#3: You receive a call that a person is in McDonald's with a gun plainly visible in a shoulder holster. While you are enroute, you receive word that the subject has left the restaurant in a green Chevy Impala, license tag #BR-549, heading west. You see the vehicle a short time later. Can you stop the vehicle? Can you take ANY investigative action? Is the new Star Trek movie going to be as good as the commercials indicate?<sup>2</sup>

For difficult questions like these, we need to go way back and start with one of the basic rules of democracy:

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<sup>1</sup> When you hear the term "gunslinger," I'm sure many of you thought about figures like John Wayne (the Chief's favorite) or Billy the Kid. I thought immediately of Yosemite Sam from the old Bugs Bunny cartoons. That's why I receive free counseling from Guilford County Mental Health. "I HATE that rabbit...."

<sup>2</sup> Star Trek (2009) directed by J.J. Abrams (executive producer of "Lost," "Fringe," and "Alias") opens today in theaters across the country. More on this later.

## FOR SOMETHING TO BE ILLEGAL, THERE MUST BE SOME SORT OF LAW THAT MAKES IT ILLEGAL.

You've no doubt heard the expression "It's a free country." Well, this expression is true<sup>3</sup> right up to the point where a law is passed that takes some of that freedom away. You have the right to carry a gun. That right is not given to you by the Second Amendment to the U.S. Constitution, but it is protected by that Amendment.<sup>4</sup> However, there are a multitude of laws on the books that regulate when and where you can possess and carry a gun. Let's look and see if any of them prohibit the activity that we are hypothesizing about.<sup>5</sup>

Let's start with federal law. Most of us are aware that not everyone can possess a handgun under federal law. The categories of folks who cannot legally possess a firearm are set out in The Gun Control Act of 1968:<sup>6</sup> those convicted of a crime punishable by imprisonment for more than a year, fugitives from justice, drug users or addicts, mental defectives<sup>7</sup> or those who have been committed to a mental institution, aliens<sup>8</sup> illegally in the country or those lawfully admitted but without permanent residence status, people dishonorably discharged from the military, those who have formally renounced U.S. citizenship, those subject to a court order prohibiting harassing an intimate partner or their child, those convicted of a misdemeanor crime of domestic violence, and juveniles.<sup>9</sup>

While these are good laws to have on the books, they are not much help to you on the street since you normally can't tell from looking at someone whether they fall into one of these categories (except maybe for juveniles).<sup>10</sup> So let's look at the locations where firearms are prohibited under federal law.

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<sup>3</sup> Unlike the expressions "It's always darkest before the dawn" and "You are what you eat."

<sup>4</sup> There has been some argument over whether the Second Amendment actually applies to private citizens and personal handguns, but the Supreme Court recently gave support to the idea that it does in the recent case of District of Columbia v. Heller, 554 U.S. \_\_\_\_ (2008). Of course, this is the same Supreme Court that decided Arizona v. Gant, 556 U.S. \_\_\_\_ (2009), so take that with a grain of salt (another odd expression).

<sup>5</sup> I pause here to point out that this update is ONLY about open carry of firearms. The subjects of concealed weapons and permits to carry concealed and off-duty carry by police officers and concealed carry by retired police officers and state to state reciprocity of concealed carry permits would all be good topics for legal updates. If you're good and behave yourselves, you might get some of these in the near future. For now, we're just talking about UNconcealed, clearly visible firearms.

<sup>6</sup> 18 U.S.C. 44 §922(g). In addition, 18 U.S.C. 44 §922(n) prohibits persons under indictment for a crime punishable by imprisonment for more than a year from receiving a firearm.

<sup>7</sup> Not as broad a term as you might think, a person actually has to be adjudicated as a mental defective to be disqualified to possess a gun. Otherwise, there would be a lot of rednecks having to part with their guns. You might have been a redneck if your last words were "Hey, watch this!"

<sup>8</sup> For you mental defectives out there, this is not referring to Martians or Vulcans. Did I mention that "Star Trek" opens today? In the epic Kirk vs. Picard debate, put me squarely in the Kirk camp. Picard was always too stuffy for my taste.

<sup>9</sup> Subject to some exceptions found in 18 U.S.C. 44 §922(x).

<sup>10</sup> Obviously, if the gun toter is holding a sign that says "I hereby renounce my U.S. citizenship," is smoking a joint, and/or has green skin with big bulbous eyes, you would have probable cause that they can't possess a firearm, but life is never that clear-cut, is it?

The only locations under federal law where a person<sup>11</sup> is not permitted to possess a firearm openly or concealed are school zones<sup>12</sup> and federal facilities.<sup>13</sup> A Federal facility is “a building or part thereof owned or leased by the Federal Government, where Federal employees are regularly present for the purpose of performing their official duties.”<sup>14</sup> Surprisingly, this would NOT include most banks. Federal law does NOT prohibit the open possession of a firearm in a bank unless it is a federal facility.<sup>15</sup>

North Carolina law, on the other hand, also prohibits felons,<sup>16</sup> minors,<sup>17</sup> and those under a domestic violence protective order<sup>18</sup> from possessing a firearm, and protects a few more locations. N.C.G.S. 14-269.2 makes it illegal for a person to “possess or carry, whether openly or concealed” firearms and many other types of weapons on educational property. N.C.G.S. 14-269.3 prohibits carrying a firearm into any place where alcohol is sold AND consumed<sup>19</sup> or any place where a fee is charged for admission.<sup>20</sup> N.C.G.S. 14-269.4 protects the State Capitol Building, the Executive Mansion, the Western Residence of the Governor, or the grounds of those buildings. It also prohibits possession of firearms in courthouses. Finally, N.C.G.S. 14-277.2 makes it unlawful to possess or have immediate access to any dangerous weapon at any parade, funeral procession, picket line, or demonstration occurring either at a private health care facility or public place owned or controlled by the state or a local government.<sup>21</sup> Again, there are several additional places where concealed guns are prohibited even with a concealed carry permit, but that’s a topic for another time.

There’s one other state law that we have to consider and that’s our old friend from the common law, “Going Armed To The Terror Of The People.” This is one of those

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<sup>11</sup> There are certainly exceptions for law enforcement officers, but we’re just talking about ordinary citizens here.

<sup>12</sup> 18 U.S.C. 44 §922(q).

<sup>13</sup> 18 U.S.C. 44 §930.

<sup>14</sup> 18 U.S.C. 44 §930(g)(1).

<sup>15</sup> Many of you will immediately think your legal adviser must be wrong about this. In fact, I was asked this very question by an officer in the last couple of weeks and while I won’t admit to being wrong, I will say that after further research, my opinion has changed to the opposite of what it was. After a lot of searching of federal law and regulations, I can find no law which makes mere open possession of a firearm in a bank illegal. But let’s be clear: I still believe that carrying a firearm into a bank (even if it is holstered) is a good way to get arrested or worse, shot.

<sup>16</sup> N.C.G.S. 14-415.1. Possession of Firearm by Felon is a Class G Felony.

<sup>17</sup> N.C.G.S. 14-269.7. It is a class 2 misdemeanor for a person under 18 years of age to possess a handgun (again, subject to some exceptions set out in this statute).

<sup>18</sup> N.C.G.S. 14-269.8. Class H felony.

<sup>19</sup> No more shootouts at the saloon like the old days of the wild Wild West.

<sup>20</sup> There are exceptions to this statute for not only law enforcement officers but also for the owner or lessee of the premises or business, a participant in the event (if given permission by the owner, lessee, or event sponsor,) or a person hired as a security guard for the business or event.

<sup>21</sup> Fortunately for some of us, a rifle or gun carried in a gun rack in a pickup truck at a holiday parade or in a funeral procession is NOT prohibited. I have a brother-in-law who once got into some trouble for weaving back and forth while driving in a funeral procession. It seems he and another driver in the line decided to imagine they were in a NASCAR race and were “warming up their tires.” I am not making this up. My sister really picked a winner. You might be a redneck if...

laws that have a great name, but aren't as exciting as they sound.<sup>22</sup> To be guilty of this offense, a person must arm himself with a gun for the purpose of terrifying others and go about on public highways in a manner to cause terror to others. Court decisions inform us that it may not be necessary for anyone to actually be terrified, as long as the defendant acts “in such a manner as will naturally cause a terror to the people.”<sup>23</sup>

Under this law, however, the person must be arming himself for the purpose of terrifying others. It would be hard, therefore, to make a charge of “going armed to the terror of the people” based on someone simply walking around in public with a holstered firearm.

In addition to federal and state law, local governments have some limited authority to enact ordinances relating to possession of firearms. The City of High Point has two such ordinances.<sup>24</sup> Section 12-1-5 of the High Point City Code prohibits the possession of weapons (including firearms) “in or upon any building, park or other property, or their appurtenant<sup>25</sup> premises, which is owned or otherwise under the legal control of the City of High Point.”<sup>26</sup> Section 12-1-7 prohibits firing a gun inside the city limits as well as brandishing or displaying a firearm in a threatening manner while on public property.

One other important thing to consider is the ability of private citizens, organizations, and businesses to prohibit the possession of firearms on their property. Under the tenets of property law, when you enter a store or business as a customer, you enter subject to any conditions<sup>27</sup> the owner puts on entry. For example, you will commonly see the “No Shoes, No Shirt, No Service”<sup>28</sup> condition posted at the door. Similarly, owners can certainly post a “No Firearms” sign or something along those lines to prevent folks from carrying firearms either openly or concealed on the property. Entering the business without following the conditions imposed makes one a trespasser subject to arrest on a trespassing charge. There is also no requirement that the conditions be posted in advance; even without a sign, an owner can ask someone to leave and their failure to do so would make them a trespasser.

With that lengthy background explanation out of the way, let's return to our three hypothetical questions:

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<sup>22</sup> N.C.G.S. 14-288.8 “Possession of a Weapon of Mass Death and Destruction” heads this list. A sawed-off shotgun is considered a weapon of mass death and destruction under this statute. The law is silent on phasers set to kill.

<sup>23</sup> State v. Dawson, 272 N.C. 535 (1968).

<sup>24</sup> I am aware that officers outside High Point read these updates and advise those folks to check their local city codes or county ordinances to see what prohibitions exist in their location.

<sup>25</sup> Ap-pur-te-nant: *adj.* Annexed or pertaining to some more important thing; accessory; incident; as, a right of way *appurtenant* to land or buildings. There's your word of the day.

<sup>26</sup> Excepted from this are officers, including City of High Point Animal Control officers and private security officers under contract with the city.

<sup>27</sup> Limited, of course, by anti-discrimination laws.

<sup>28</sup> I've always lived in the South – do they have signs like this up north or is this another redneck thing? And is the corollary to this “No Pants, No Problem?”

#1: The bank parking lot scenario: While it appears that no crime has been committed and there is no law prohibiting the person with the gun from entering the bank, I am going to go out on a legal limb and advise you that you should at least “check things out.” Try to do a consensual “field contact” and talk to the person to get a sense of whether he is legitimate or not. You can certainly follow him into the bank and keep an eye on him. I do not believe that you have the authority to do a Terry stop absent some indication that the person is “casing” the bank.<sup>29</sup> If at any point, the subject starts to draw his weapon, his status has changed from customer to bank robber and you should treat him as such.

#2: The Wal-Mart scenario: The store manager has the authority to ask the armed subject to leave if he wishes regardless of whether there are signs prohibiting possession of weapons. After all, shopping at Wal-Mart is a privilege,<sup>30</sup> not a right. If he refuses to leave, arrest him for trespass and take his weapon.

#3: The vehicle leaving McDonald’s scenario: In my opinion, you would not have reasonable suspicion to stop this vehicle simply because the driver carried a firearm into McDonald’s. If McDonald’s is posted with “No Guns Allowed” signs, you could make an argument for stopping the vehicle based on your reasonable suspicion that a “trespass” has just occurred. Regardless, there is nothing to prevent you from running the license tag, then running the owner’s record, and it is my opinion that you would be able to stop the vehicle if the owner’s driver’s license was revoked or if the owner was a person prohibited from possessing a firearm (for example, a convicted felon) and you had no indication that someone other than the owner was driving the vehicle.<sup>31</sup>

That’s more than enough for now, but let me leave you with a good story sent to me this week:

An older man picked up his brand new Corvette at a High Point dealership and drove it out onto the road. As he pulled onto I-85, he floored it and shot up to 80mph in seconds. There he was ... feeling the thrill of the ride. Then, looking in his rear view mirror, he saw the HPPD officer behind him, blue lights flashing and siren blaring. He floored it to 100 mph, then 110, then 120. Suddenly he thought, "What am I doing? I'm too old for this," and pulled over to await the officer's arrival.

Pulling in behind him, the officer walked up to the Corvette, looked at his watch and said, "Sir, my shift ends in 30 minutes. If you can give me a reason for speeding that I've never heard before, I'll let you go."

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<sup>29</sup> If he has a weapon and appears to be “casing” the bank, you would have a situation very much like the facts of the original Terry v. Ohio case itself.

<sup>30</sup> And by “privilege,” I mean “highly unpleasant experience.”

<sup>31</sup> See State v. Hess, 185 N.C. App. 530 (2007).

The old gentleman paused then said, "Three years ago, my wife ran off with a High Point Police Officer. I thought you were bringing her back."

"Have a good day, Sir," replied the officer.

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