

Christmas Hodgepodge:<sup>1</sup>  
Four Little Legal Issues  
Legal Question of The Week  
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Many times officers or other strange people will stop by my office and ask a question that is both interesting and thought-provoking. Often I will know immediately that it would be a good subject for the Legal Question of the Week bulletin. Recently though, I have fielded several questions that have been neither interesting nor thought-provoking, the kind that lend themselves to a simple answer or a quizzical stare. This legal update deals with the questions that fall in between those two extremes. They may be interesting, but lend themselves to a simple answer. I have taken four such questions and crammed them together into this Legal Question Hodgepodge.<sup>3</sup>

**Question #1: Brian, I arrested Joe Smith for beating up his girlfriend Jane Jones. Joe and Jane aren't living together and have never lived together as husband and wife, but Jane is Joe's baby's mama.<sup>4</sup> I charged Joe with Assault on a Female and followed all the protocols for a domestic violence incident. Then the magistrate set a bond for \$500 instead of placing a domestic hold on the defendant. When I asked him about it, he said that the case did not meet their criteria for placing a domestic hold on an individual. What gives?**

Answer: Both the officer and the magistrate are correct here. The officer was right to treat this as a domestic violence situation because under most of our laws, all that is required for a crime to be domestic violence is a "personal relationship." The definition of "personal relationship" comes from N.C.G.S. 50B-1(b). It reads as follows:

*"(b) For purposes of this section, the term "personal relationship" means a relationship wherein the parties involved:*

*(1) Are current or former spouses;*

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<sup>1</sup> Definition: "A heterogeneous mixture."

<sup>2</sup> Definition: "An inexhaustible store."

<sup>3</sup> I had considered calling this update "Christmas Potpourri" (definition: a miscellaneous collection) but decided against it. Although the definition more closely fits, it simply sounds manlier to say "hodgepodge" than it does to say "potpourri." Try it yourself. By the way, for those of you in Street Crimes, the "t" is silent in "potpourri."

<sup>4</sup> Or "the mother of Joe's child," if you prefer the traditional phrasing. This fact pattern would meet the legal definition of "baby mama drama."

- (2) *Are persons of opposite sex who live together or have lived together;*
- (3) *Are related as parents and children, including others acting in loco parentis to a minor child, or as grandparents and grandchildren. For purposes of this subdivision, an aggrieved party may not obtain an order of protection against a child or grandchild under the age of 16;*
- (4) **Have a child in common;**
- (5) *Are current or former household members;*
- (6) **Are persons of the opposite sex who are in a dating relationship** *or have been in a dating relationship. For purposes of this subdivision, a dating relationship is one wherein the parties are romantically involved over time and on a continuous basis during the course of the relationship. A casual acquaintance or ordinary fraternization between persons in a business or social context is not a dating relationship.” (Emphasis added)*

As you can see, our lovebirds have a “personal relationship” in two ways under 50B-1(b). This triggers the domestic violence protocols set out in General Order 3.8, including providing emergency assistance, special arrest rules (situations where arrest MUST be made if you have probable cause), and giving the victim the information sheet contained in AOC form CV-323T pursuant to newly amended G.S. 15A-831(a).

But the magistrate was also correct<sup>5</sup> in proceeding to set conditions of pretrial release, including bond, rather than holding the defendant until a judge could do those things. Why? Because the magistrate has a different legal definition to apply! The special rules on bail and pretrial release that require a judge instead of a magistrate to set conditions of release are set out in G.S. 15A-534.1. It reads as follows:

*“(a) In all cases in which the defendant is charged with assault on, stalking, communicating a threat to, or committing a felony provided in Articles 7A, 8, 10, or 15 of Chapter 14 of the General Statutes<sup>6</sup> upon **a spouse or former spouse or a person with whom the defendant lives or has lived as if married**, with domestic criminal trespass, or with violation of an order entered pursuant to Chapter 50B, Domestic Violence, of the General Statutes, the judicial official who determines the conditions of pretrial release shall be a judge...” (Emphasis added)*

As you can see, the relationships that trigger this provision are much narrower in scope than in Chapter 50B. In our hypothetical situation, G.S. 15A-534.1 would not apply because Jane and Joe are not spouses, former spouses, or people who are living together or have lived together as if married. This does nothing to change the fact that it is legally “domestic violence.” It simply means a magistrate must now set conditions of pretrial release, including an appearance bond if appropriate.

**Question #2: Brian, I am so tired of having to respond to businesses where burglar alarms keep going off. At some of these locations, it is always a false alarm,**

<sup>5</sup> As hard as that may be to believe. Remember that this is a hypothetical situation.

<sup>6</sup> Generally rape, sex offense, felony assaults, kidnappings, and arsons or other burnings.

**but I have to respond and take the time to ensure that the alarm is false and wait for a property manager to arrive on the scene.<sup>7</sup> Can't you do anything about this?**

Answer: Yes. In fact, I already have. The City Council recently approved amendments to the City of High Point False Alarm ordinance. The amendments were written by yours truly and were implemented simultaneously with a change to new software for handling the notification, billing, and record-keeping for burglar alarms. One of the modifications was to allow for the police to stop responding at all to these alarm calls after a location has 9 false alarms within a year or if the alarm user owes any money for previous false alarm violations. It's the least I could do for you fine officers.<sup>8</sup> Please be sure and document the alarm calls that you respond to that are false alarms.

**Question #3: Brian, when should I report a situation with a juvenile to the Department of Social Services?**

Answer: N.C.G.S. 7B-301 reads as follows:

*“Any person or institution who has cause to suspect that any juvenile is abused, neglected, or dependent, as defined by G.S. 7B-101, or has died as the result of maltreatment, **shall report** the case of that juvenile to the director of the department of social services in the county where the juvenile resides or is found...”*

Let's break down the legalese here. YOU are a person, despite what your supervisor says. Together with your fellow officers and employees, WE are the institution<sup>9</sup> called the High Point Police Department. If YOU or WE have cause to suspect that a juvenile is abused, neglected, or dependent, YOU or WE shall report it to DSS. The word “shall” there makes it a mandatory duty placed on us by statute. The legal office doesn't have many rules, but one of our rules is that we always do what is legally mandatory and we hope our officers do, too.

Under G.S. 7B-101, an “abused juvenile” is a juvenile less than 18 years old whose caretaker does one of the following:

1. Inflicts or allows to be inflicted upon the juvenile a serious physical injury other than by accident.
2. Creates or allows to be created a substantial risk of serious physical injury to the juvenile other than by accident.
3. Uses or allows to be used upon the juvenile cruel or grossly inappropriate procedures or devices to modify behavior.
4. Commits, permits, or encourages the commission of a violation of several specific sex-related laws by, with, or upon the juvenile.

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<sup>7</sup> Actually, this may not be what you have to do at all. I have never responded to the scene of a burglar alarm. I just know it ties up multiple officers for a long time for no purpose thus creating what the financial wizards call “money down the crapper.”

<sup>8</sup> Plus, the Chief told me to.

<sup>9</sup> In fact, changing our name to the High Point Institution might explain why some of us are still employed, but I digress.

5. Creates or allows to be created serious emotional damage to the juvenile.
6. Encourages, directs, or approves of delinquent acts involving moral turpitude<sup>10</sup> committed by the juvenile.

A “dependent juvenile” is a juvenile in need of assistance because the juvenile has no one responsible for his care or supervision or his caretaker is unable to provide for his care or supervision and lacks an appropriate alternative child care arrangement. A “neglected juvenile” is one who does not receive proper care, supervision, or discipline from his caretaker or who has been abandoned, or who is not provided necessary medical care, or who is not provided necessary remedial care, or who lives in an environment detrimental to the juvenile’s welfare, or who has been placed for care or adoption in violation of law.

If you encounter a juvenile in your many adventures who fits into one or more of these three categories, you MUST notify the department of social services. The report may be made orally, by telephone,<sup>11</sup> or in writing. Do it as soon as possible.

**Question #4: Brian, we made a warrantless arrest of a defendant when he walked past us smoking a marijuana cigarette. Once we had him in custody, we asked him for consent to search his vehicle which was parked nearby. He gave consent and we found a dead body in the back seat. Did we screw up?**

Answer: No. The fact that someone is in custody does not prevent them from giving voluntary and valid consent for a search. United States v. Watson, 423 U.S. 411 (1976). The key is whether the consent was given voluntarily and custodial status is simply a factor in that determination. Obviously, if you display force or threaten force, you probably are not obtaining voluntary consent.

In a related case that you will be hearing about soon in our In-Service Legal Update training is State v. Cummings, a North Carolina Court of Appeals case decided last year. In this case, Detective Michael Conwell of the Greensboro Police Department was working a case and had secured the defendant’s vehicle. When the defendant was advised of his Miranda rights prior to interrogation, he invoked his right to counsel. After that, he was requested for and gave consent for a search of his car where all kinds of good evidence against him was found. The Court of Appeals ruled that asking for consent to search was not interrogation and therefore did not violate Miranda.

So that completes our Legal Update Hodgepodge Edition. Tune in next week when we share our last legal update of 2008.

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<sup>10</sup> Definition: Conduct contrary to accepted morals. In other words, you did a bad thing that reflects badly on your character. Speeding is generally not a moral turpitude crime while embezzling millions from your employer involves lots of moral turpitude.

<sup>11</sup> Wouldn’t a telephone call be an oral communication? Maybe you could tap it out in Morse Code on the phone receiver. I think I saw that on MacGyver once.

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