

**Misdemeanor Arrests:  
Multiple Choice Edition  
Legal Question of the Week  
Vol. 1, Number 5  
July 25, 2008**

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Alright kids – get out your #2 pencils and remember that the bubbles should be filled out completely but do not go outside the lines<sup>1</sup>. This week’s question deals with misdemeanor arrests and when they may be done without an arrest warrant. To give you a fighting chance, this is a multiple choice exam. Stay tuned at the end for a word about the arcane magic known as DNA and a new and effective interrogation technique. There may even be a money saving tip thrown in for good measure.

**QUESTION ONE:** You get a call from one of the highly trained security officers at High Point University asking you to respond and take custody of a person that they have detained for criminal activity. You respond and Security Officer Joe Friday tells you that he caught Eddie Brock stealing a computer from another student’s unattended backpack. Officer Friday is currently standing on Brock’s neck and the computer (a laptop) is next to him on the ground. Friday wants you to arrest him immediately. What do you do?

- a. Arrest Brock and take him to the magistrate’s office.
- b. Determine the value of the laptop computer.
- c. Arrest Officer Friday for impersonating a LEO and false imprisonment.
- d. Call your supervisor.

**QUESTION TWO:** HPUSO (HPU Security Officer) Friday calls you again. You respond and he has Earnest Bass “detained.” He tells you that Mr. Bass broke a window in one of the campus buildings by throwing a rock through it. Friday wants you to arrest him immediately. As you are standing there, Mr. Bass kicks Friday in the shin. What do you do?

- a. Call for the TACT team.
- b. Call for a person with some tact.
- c. Call for a K-9.
- d. Arrest Mr. Bass.

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<sup>1</sup> Isn’t it amazing to think that your educational success, which is to say your future career and earning potential as an adult, depended on your ability to stay inside the lines when coloring in a bubble on standardized tests? There are probably many people working for minimum wage today who would have been CEOs of multinational corporations if they had merely been able to completely color in a circle. But I digress...

**QUESTION THREE:** HPUSO Friday is at it again. This time he has detained Flint Marko for assaulting Marko's girlfriend Betty Brandt. Betty is at the scene and has a bruise on her cheek. Friday wants you to arrest him immediately. What do you do?

- a. Arrest Marko for Assault on a Female.
- b. Advise Betty Brandt to take out a warrant.
- c. Advise Friday to take out a warrant.
- d. Advise Friday to call the Chief.

**QUESTION FOUR:** Friday has now detained Ben Reilly for spraying graffiti on a campus building and wants you to arrest him immediately. What do you do?

- a. Give Reilly a stern talking to and let him go.
- b. Give Friday a stern talking to and let Reilly go.
- c. Tell Friday to take out a warrant.
- d. Arrest Reilly for Injury to Real Property.

**QUESTION FIVE:** Same facts as Question four but this time when you ask Ben Reilly for identification, he can't produce any. You have a sneaking suspicion that he may really be named Peter Parker. What do you do?

- a. Arrest Reilly for Injury to Real Property.
- b. Tell Friday to go take out a warrant.
- c. Tell Friday to stop detaining everyone on campus.
- d. Call the Police Attorney.

Okay – pencils down. Let's see how we did.

<b>QUESTION ONE – ANSWER: b</b>
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Let's go to N.C.G.S. 15A-401(b), Arrest By Officer Without a Warrant. The statute tells us that an officer with probable cause may arrest without a warrant for any offense that takes place in his or her presence. If the offense occurred outside the presence of the officer, the officer may arrest without a warrant if it was a felony offense. If it was a misdemeanor offense, an arrest without a warrant may be made only if the officer has probable cause that:

1. the suspect will not be apprehended unless immediately arrested; OR
2. the suspect may cause physical injury to himself or others or damage to property unless immediately arrested; OR
3. the arrest is for 14-72.1 (concealment of merchandise), 14-134.3 (domestic criminal trespass), or DWI; OR
4. the arrest is for a misdemeanor assault AND the suspect and the victim have a personal relationship as defined in 50B-1 (domestic); OR
5. the arrest is for violating a domestic violence protective order; OR
6. the arrest is for violating a pre-trial release order under 15A-534.1(a)(2) (for certain crimes of domestic violence.)

So under these facts, if the value of the computer is less than \$1000.00, the charge would be misdemeanor larceny and a warrantless arrest may not be made (assuming we don't have one of the exceptions above.) However, if the value of the computer is greater than \$1000.00 you may make a warrantless arrest for felony larceny.

**QUESTION TWO – ANSWER: d**

You are now arresting Mr. Bass for a misdemeanor (the assault) that occurred in your presence. If Mr. Bass had not been foolish enough to kick Friday right in front of you, a warrantless arrest would not have been legal unless one of the exceptions applied. Extra points if you knew Mr. Bass' middle initial was T.

**QUESTION THREE – ANSWER: a**

Because Marko has committed a violation of 14-33(c)(2) Assault on Female (assuming he is over 18) against a person he is in a dating relationship with (which falls under the definition of personal relationship under 50B-1), he falls squarely under exception number 4 above. Friday will be so happy and the Chief will not have to get up to answer the phone.

**QUESTION FOUR – ANSWER: a, c, and possibly b**

As long as you didn't answer "d", give yourself credit for a right answer here. This is a misdemeanor committed outside your presence that does not fall into an exception listed in 15A-401. Friday will have to go take out a warrant. If you answered d, you have now made an illegal arrest by violating North Carolina statutory criminal procedure law. Your police attorney frowns on things like that.

**QUESTION FIVE – ANSWER: a**

Because Mr. Reilly has no identification, you have probable cause to believe he will not be apprehended unless immediately arrested. For all we know, he could be a clone, or an alien, or something along those lines. In any event, whoever he is has now placed himself in one of the exceptions and is subject to warrantless arrest. If you marked "d" give yourself partial credit, calling the police attorney is always a good answer if you are unsure of what you can legally do. My cell phone is on 24-7 and the number is at the bottom of this update.

If you did well on the test, congratulations – you now have something else to boast about to your fellow officers! If you didn't do well, don't let it hurt your self-esteem, perhaps you simply are not a good test-taker. There are many other city jobs for which you might be qualified.

## **AND NOW, A WORD ON DNA....**

Although it takes years of study to understand the science of DNA, it takes a matter of seconds to understand that gathering a DNA swab from a suspect is a search under the Fourth Amendment. Therefore, the same rules apply as would apply for a search. If you have arrested a suspect and would love to have a sample of his DNA, you may obtain his consent or obtain a search warrant (if you have probable cause that the DNA will be evidence of a crime). Under certain circumstances, you may get a non-testimonial identification order with less than probable cause. Check out 15A-271 through 15A-282.

### **NEW INTERROGATION TECHNIQUE**

Police in Radnor, Pa. interrogated a suspect by placing a metal colander<sup>2</sup> on his head and connecting it with wires to a photocopy machine. The message 'He's lying' was placed in the copier, and police pressed the copy button each time they thought the suspect wasn't telling the truth. Believing the 'lie detector' was working, the suspect confessed. Note: Snopes.com says that this is merely a legend. I say never let the truth get in the way of a funny story.

### **AND FINALLY – A MONEY SAVING TIP**

This one was also checked out with Snopes.com and is absolutely true. You know how you get charged a fee if you call 411 directory assistance on your cell phone? When you need to use the 411 Information option, simply dial 1(800) FREE 411 (1-800-373-3411) you will incur no charge. This works on your home telephone as well. My advice is to store this number in your phone so you will always have it.

See, Chief, I'm paying for myself already!

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<sup>2</sup> A colander is a kitchen utensil used to drain spaghetti and other pasta. It is a bowl with lots of little holes in it.