

**“Santa Claus Is Coming To Town”:
Legal Issues Inspired By The Christmas Song
Legal Question of The Week
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Here in the legal office, we have been lamenting the fact that because every recording artist¹ who has ever released a song since 1942 has also seen fit to grace the listening public with a “special” Christmas² CD, there exists a mountain of mediocre and really bad renditions of Christmas music that is constantly played on the radio at this time of year. Do we really need 25,000 different versions of “Jingle Bell Rock?” But in the midst of all the clutter, there are a few classics. Here’s one that also lends itself to some legal commentary...

“OOOHHH, you better watch out, you better not cry, you better not pout, I’m telling you why. Santa Claus³ is coming to town.”

I hope you’ve already gotten your Christmas tree (if you’re into that sort of thing,) but if you haven’t, please be aware that N.C. Gen. Stat. 14-129 prohibits the taking of certain wild plants (there’s a long list in the statute) from the land of another, including “Trailing Christmas” and “Christmas greens.”⁴ I’m pretty sure neither of these have anything to do with actual Christmas trees, but stealing trees off someone else’s land would still be a bad idea.

In case you are interested, N.C.G.S. 103-4(a) makes Christmas an official State holiday and the Fraser fir⁵ is the official Christmas tree of the State of North Carolina

¹ I use this term loosely enough to include “artists” like the Muppets, Alvin and Chipmunks, Michael Bolton, Meatloaf, and Porky Pig (whose rendition of “Blue Christmas” is actually one of my favorites.)

² Or the winter holiday of your choice. Signed, the ACLU.

³ Pere Noel, Svaty Mikulas, Father Christmas, Weihnachtsmann, Babbo Natale, Sinterklaas, Kris Kringle, Saint Nicholas, etc.

⁴ This statute says that it does not apply to the Counties of Cabarrus, Carteret, Catawba, Cherokee, Chowan, Cumberland, Currituck, Dare, Duplin, Edgecombe, Franklin, Gaston, Granville, Hertford, McDowell, Pamlico, Pender, Person, Richmond, Rockingham, Rowan and Swain. Apparently horticultural anarchy reigns in those counties.

⁵ *Abies fraseri*

according to N.C.G.S. 145-25. Now that you are armed with this knowledge, you are sure to be the hit of every Christmas party lucky enough to have you in attendance.

“He sees you when you’re sleeping, he knows when you’re awake...”

This line has always scared me a little, if I’m honest. Why is Santa watching me all the time? Is that even legal? Hey, I’m glad you asked.

Just this year, the legislature passed a new stalking law. They passed a new stalking law because no one understood the old stalking law. A person is guilty under the new stalking statute (N.C.G.S. 14-277.3A) if he or she:

1. Willfully
2. Without legal purpose
3. Either
 - a. harasses⁶ another person on more than one occasion OR
 - b. engages in a course of conduct⁷ directed at another person
4. Knowing it would cause
5. A reasonable person in the victim’s circumstances to
6. Either
 - a. Fear for the person’s safety, the safety of the person’s immediately family or close personal associates OR
 - b. Suffer substantial emotional distress by placing that person in fear of death, bodily injury, or continued harassment.

The new statute also grants jurisdiction to North Carolina for prosecuting a violation of the statute if any part of the violation occurred in North Carolina, including the effect on the victim. That’s bad news for Santa.

But applying this law to Santa, he’s probably off the hook. After all, who could be afraid of a “jolly” old man who wears fur, carries around a bag full of “toys,” drives a sleigh with jingle bells on it, and plays with elves? Well, okay, if you look at it that way...

“He knows if you’ve been bad or good, so be good for goodness sake.”

⁶ Harassment (pronounced either way) is defined as knowing conduct directed at a specific person that terrorizes that person and serves no legitimate purpose. I’m not sure what legitimate purpose you would have to terrorize another person, but I’m sure you can think of something.

⁷ Course of conduct is defined as two or more acts including acts through a third party where the stalker is in the presence of, or follows, watches, threatens, or communicates to or about a person, or interferes with a person’s property. Pretty broad definition here.

What happens to the kids on the “bad” list⁸? They wind up in our juvenile court system after being caught and possibly interrogated by a fine law enforcement officer. But maybe you, like many officers, hesitate to arrest a juvenile because the juvenile court system is so complicated. If so, you will no doubt gain much from the following Juvenile Age Guide, broken down into procedural issues and interrogation issues.⁹

JUVENILE AGE GUIDE PART ONE: PROCEDURALLY

From Birth Through Age Five: Juvenile court has NO jurisdiction and the child may not be brought before the court by petition, charge, warrant, order, or indictment! You may not petition the court or “charge” the child no matter what his behavior has been.¹⁰ The age you consider is the age the child was when the bad act occurred.

From Age Six Through Age Twelve: Juvenile court now has jurisdiction and you may petition the court for a determination of delinquency. However, no matter how serious the offense, there can be no transfer of the matter to superior court for trial as an adult. Thus, a 12 year old who commits a first degree murder must have a hearing only in juvenile court to determine delinquency, and his punishment will be no greater than custody in a training school until his 18th birthday (except for very serious felonies like murder where he may be held up to his 21st birthday).¹¹

Ages Thirteen, Fourteen, and Fifteen: Children this age will find all their matters originally heard in juvenile court, but felonies may be transferred to superior court at the discretion of the juvenile court judge. If a case is transferred to superior court the child will be treated in all respects as an adult (except confinement will be in a juvenile facility).

Sixteen Years of Age: in a criminal case, the child is treated as an adult in all respects except for *Miranda* (see below), capital punishment (not eligible), and confinement (only in juvenile facility).

Seventeen Years of Age: if a child commits first-degree murder on or after his seventeenth birthday, he may suffer capital punishment for his act.¹² He is still not allowed to be confined with adults, and he still is entitled to his juvenile *Miranda* rights.

⁸ Or “the morally challenged” list. Sincerely, the ACLU.

⁹ Special thanks to the late Reese Trimmer and the early Ralph Strickland for this information.

¹⁰ You may, however abandon the child for no apparent reason and with impunity at your nearest police department or even give him or her to a law enforcement officer if the child is less than seven days old. N.C.G.S. 14-322.3; 7B-500. Is this a great state or what?

¹¹ This limit was raised to age 21 in part due to a case in Durham where a juvenile murderer was released on his 18th birthday only to commit another murder – he shot a unarmed and compliant convenience store clerk during a robbery. He hanged himself in the jail prior to being tried for the second murder.

¹² A local attorney actually argued once in High Point Superior Court that his client (who was 17 at the time of the murder) should not be eligible for the death penalty because...he was born prematurely! The argument was that had he been carried a full term, he would have only been 16 at the time of the offense. And he made this argument with a straight face, which shows how good a lawyer he is.

Eighteen Years of Age: he is an adult now for both civil and criminal purposes; if he is confined to the prison system he will be housed at a special youth detention center until his twenty-first birthday. He will be then transferred to Central Prison or some other adult prison unit.

PART TWO: MIRANDA

From Age Six Through Age Thirteen: The child must be read the “juvenile Miranda rights” found in N.C.G.S. 7B-2101(a)¹³ before a custodial interrogation. There may be no custodial interrogation unless either a parent, guardian, custodian, or attorney is present and the child cannot waive that right. The child may waive his or her other interrogation rights.

From Age Fourteen Through Age Fifteen: The child may now waive his right to have a parent, guardian, custodian or attorney present. You must still advise him of his “juvenile Miranda rights.”

From Age Sixteen Through Age Seventeen: Although a youth¹⁴ at this age must be prosecuted as an adult, you **MUST STILL READ HIM HIS JUVENILE RIGHTS** unless he fits into one of three exceptions¹⁵ and even then I would advise you to read them out of an abundance of caution. He may waive all interrogation rights.

From Age Eighteen Until ...: This person is now an adult for purposes of interrogation rights.

**“SOOOOOO, You better watch out, you better not cry,
you better not pout, I’m telling you why. Everybody now!
Santa Claus is coming TOOOOO TOOOWWNN.”**

This will be the last legal update for the next few weeks as things wind down during the holiday season. Please have a safe holiday and don’t do anything that will get you fired or the department sued. I leave you with the following Christmas wish...

Please accept with no obligation, implied or implicit, my best wishes for an environmentally conscious, socially responsible, low-stress, non-addictive, gender-neutral celebration of the winter solstice holiday, practiced within the most enjoyable traditions of the religious persuasion of your choice, or secular practices of your choice, with respect for the religious/secular persuasion and/or traditions of others, or their choice not to practice religious or secular traditions at all.

I also wish you a fiscally successful, personally fulfilling and medically uncomplicated recognition of the onset of the generally accepted calendar year 2009, but not without due respect for the

¹³ The juvenile rights are basically the Miranda rights with the additional warning that the child has a right to have a parent, guardian, or custodian present during questioning.

¹⁴ Or “yute” if you are Joe Pesci in “My Cousin Vinny.” I love that movie.

¹⁵ At the time of the crime, he was (1) married, or (2) a member of the armed forces, or (3) emancipated (a legal determination made by the court).

calendars of choice of other cultures whose contributions to society have helped make America great. Not to imply that America is necessarily greater than any other country or the only America in the Western Hemisphere.

By accepting these greetings you are accepting these terms. This greeting is subject to clarification or withdrawal. It is freely transferable with no alteration to the original greeting. It implies no promise by the wisher to actually implement any of the wishes for herself or himself or others, and is void where prohibited by law and is revocable at the sole discretion of the wisher. This wish is warranted to perform as expected within the usual application of good tidings for a period of one year or until the issuance of a subsequent holiday greeting, whichever comes first, and warranty is limited to replacement of this wish or issuance of a new wish at the sole discretion of the wisher.

Or, as non-lawyers might say: Merry Christmas and Happy New Year!

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