

**SMITH, RODGERS & STRICKLAND, PLLC**

**ROLL CALL TRAINING  
FROM NORTH CAROLINA'S 24/7 POLICE  
ATTORNEY LAW FIRM**

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**UPCOMING SEMINAR NOTE:**

On July 18, 2003, our firm is presenting a half-day Legal Seminar entitled, "**Costly Law Enforcement Legal Errors... and how supervisors can avoid them!**" at the Durham Technical Community College. Course time is 8:30 a.m. until 12:30 p.m. For more information, please call Associate Dean Wayne Durkee at 919/686-3503.

**TOPIC:**

**WHILE KIDNAPPING CAN BE SEEN AS A SMALL, SLEEPING GOAT, I WANT TO APPROACH IT FROM A DIFFERENT ANGLE - A POSITION YOU'VE PROBABLY NEVER PREVIOUSLY CONSIDERED.**

**By Ralph B. Strickland, Jr.**

**THE NAME OF THE CASE:**

*State v. Washington*, North Carolina Court of Appeals, COA02-770, May 6, 2003.

**JUST THE FACTS, MA'AM:**

On 26 September 2001 around 7:20 a.m., Michael K. Perry left his home in Wake Forest (the little town in Wake County, not the big university in Winston-Salem where Kevin Smith - of Smith, Rodgers and Me – earned his law degree) and drove towards a donut (or doughnut) store to get breakfast for his family. A vehicle driven by the defendant, Washington, stopped in his lane of travel, and Mr. Perry began to legally pass on the left when the defendant drove into the front side of Perry's vehicle. The defendant then jumped out and ran to Perry's vehicle and seized him through the open window.

Perry got out and the defendant pushed him down, but Perry popped up and tried to escape. The defendant would not let him escape. He hit Perry above the eye, sending him "airborne" onto the hood of his car. At this point other motorists interceded. Perry suffered a cut, abrasions and some nicks on the palms of his hands.

**HOW ODD. WHAT'S UP WASHINGTON?**

Something strange, I bet. He clearly was guilty of an assault. But guess what – the DA presented the grand jury a bill of indictment for ... *second degree kidnapping!* And that jury returned a true bill!! And a trial jury returned a verdict of guilty as charged! And the judge gave him an active presumptive sentence of a minimum of 46 months as a Class IV felon committing a Class E felony! That's some class!!!! And the Court of Appeals affirmed his conviction!!!!!! [Pssst. A Class IV felon has 9 to 14 points of convictions for sentencing purposes, so the defendant had a poor criminal history, replete with convictions.]

## **AND HOW IS THIS KIDNAPPING?**

Well, kidnapping is a specific intent crime, and so the jury would have to find that the defendant unlawfully confined, restrained or removed Mr. Perry in violation of the statute. The defendant was indicted for kidnapping Mr. Perry by restraining him for the purpose of terrorizing him or for doing him serious bodily harm. Remember that kidnapping includes not only the removal of a victim for some purpose listed in the statute, but also for *restraining* or *confining* the victim in violation of the statute.

Kidnapping is a statutory offense in North Carolina and is found in G.S. 14-39. Although I am certain you are generally familiar with kidnapping, now is a good time to pick up your copy of North Carolina Crimes from the Institute of Government and review it.

## **AND NOW, AS AN ADDED BONUS AND AT NO ADDITIONAL EXPENSE, ONE OF MY ASIDES.**

The Institute of Government, part of my alma mater (Latin for “fostering mother”), the University of North Carolina, has a Publications Office. The telephone number is 919/966-4119. With your Master Card or Visa, you may order any of their publications by telephone, including the North Carolina Crimes book. **No charge for shipping**, just the 7% state sales tax. A great deal for you. They will be pleased to send you a copy of their catalog at no charge. PS Bob Farb will be coming out with a new edition of his book soon and we will notify you in a future Roll Call Bulletin of its publication date. And now you know that you can order it by telephone. If you are sworn, you need your own personal copy, and *you need to read it*.

## **WHAT FIRST LINE SUPERVISORS SHOULD KNOW:**

The Wake County DA’s office did a great job! The trial jury found the defendant guilty of kidnapping Mr. Perry by restraining him to terrorize him and do him serious bodily harm. Now you might think that there is already a certain amount of restraint involved in an assault, and there may be. The Court of Appeals said, leaving the issue open for another day, “Presuming without deciding that restraint is not an inherent part of a simple assault as defendant alleges, we hold that under the facts of this case, the restraint was separate and distinct from the assault.”

And given these facts, the Court of Appeals held that the evidence was sufficient for a verdict of restraint of Mr. Perry to terrorize and do him serious bodily harm. Although the victim suffered a cut above his eye and no other serious injury (fortunately), the statute prohibits restraint for the *purpose* of committing serious injury, and the victim does not have to be seriously injured for the statute to apply.

This case is something for you to ponder\*. If you have a crime, factually similar on its face to this one, you would do well to consider a charge of kidnapping as well as any other appropriate charges. And you might want to discuss the case with an assistant DA first, as he or she may want to make the charging decision on these cases. If I were still an assistant district attorney, I know I would. Still, it is nice to know that the charge is available.

### **\*SHALL WE PONDER? I THINK SO.**

To ponder: to weigh mentally; think deeply about; consider carefully; meditate; deliberate. An excellent verb: to ponder. In his Gospel, in Chapter 2, St. Luke describes how an angel of the Lord came upon shepherds abiding in the field, keeping watch over their flock by night. And he told them to “Fear not, I bring you good tidings of great joy. A savior is born, Christ the Lord.” And a multitude of hosts appeared saying, “Glory to God in the highest, and on earth peace, good will toward men.” And the shepherds traveled to Bethlehem and saw the babe lying in a manger. And then, verse 19:

**“And Mary kept all these things, and pondered them in her heart.”**

Fear not. Ponder

**SMITH, RODGERS & STRICKLAND PLLC PROVIDES 24-HOUR REAL-TIME LEGAL SUPPORT FOR  
CLIENT LAW ENFORCEMENT AGENCIES.**