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Misdemeanor Arrests in North Carolina More Complicated Than You Might Think! See NCGS 15A-401(b).

By Ralph B. Strickland, Jr.

Somebody, Somehow, Misinformed Us — This *is* more complicated than we think

One thing I have noticed in talking to law enforcement officers across the Tar Heel State is that somebody has somehow generally misinformed them about the making of *certain* misdemeanor arrests. I want to be assured that the officers, agents, deputies and troopers who are regular readers of Roll Call Training Bulletins know the rules authorizing misdemeanor arrests.

What Has Always Been the Case?

It has always been the case (since the common law of England) that where a *felony* is concerned

1. A law enforcement officer (LEO) may arrest the suspect if the LEO has the felony warrant in his/her possession, or
2. A law enforcement officer may arrest the suspect if the LEO knows that such a warrant exists but does not have it in his/her possession, or
3. A law enforcement officer may arrest the suspect if the felony is actually committed in the LEO's presence, or
4. A law enforcement officer may arrest the suspect where the LEO merely has probable cause to believe that the suspect has committed a felony (even though no warrant has been issued and the offense did not occur in the LEO's presence.)

What? Misdemeanor Arrest Rules are Different from Felony Arrest Rules?

While the rules for misdemeanor arrests are somewhat similar to felony arrest rules, they are unfortunately different in many important aspects. To understand misdemeanor arrests a LEO must be familiar with NCGS 15A-401, arrest by law enforcement officers. Specifically, you should refer to GS 15A-401(b).

Ralph Paraphrases the Statute

I am going to paraphrase 401(b), so here goes *my* version. To paraphrase is to restate a text in other or different words as a studying or teaching device. Truthfully, I looked that one up.

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- An officer may arrest without a warrant any person who the officer has probable cause to believe has committed a criminal misdemeanor offense in the officer's presence. [The same rule as for a felony.]
- An officer may arrest any person for a misdemeanor criminal offense where the officer has the warrant in his/her possession. [Again, the same rule as for a felony.]

Heads Up! Here Comes the Difference

- Now, where the misdemeanor offense was committed outside the presence of the officer, the rules change.

An officer may arrest without a warrant any person the officer has probable cause to believe has committed a misdemeanor,

...**And** *[this is the key, folks]:*

1. The person will not be apprehended unless immediately arrested, OR
2. The person may cause physical injury to himself or others, or damage to property unless immediately arrested; OR
3. The person has committed a misdemeanor under G.S. 14-72.1 [concealment of merchandise in mercantile establishments – shoplifting, actually], 14-134.3 [domestic criminal trespass], 20-138.1 [impaired driving], or 20-38.2 [impaired driving in a commercial vehicle]; OR
4. The person has committed a misdemeanor under G.S. 14-33(a) [simple assault, simple assault and battery, or participates in a simple affray], 14-33(c)(1) [inflicts serious injury upon another person or uses a deadly weapon, 14-33(c)(2) [assaults a female, the perpetrator being a male person at least 18 years of age], or 14-34 [assault by pointing a gun] *when the offense was committed by a person with whom the alleged victim has a personal relationship as defined in G.S. 50B-1*; OR
5. The person has committed a misdemeanor under G.S. 50B-4.1(a) [a violation of a valid domestic violence protection order]; OR
6. The person has violated a pretrial release order entered under G.S. 15A-534.1(a)(2) [for charged crimes of domestic violence].

Otherwise What?

Otherwise, an officer may not arrest a person for a misdemeanor offense that did not occur in the officer's presence and for which no warrant has been issued.

Is This Complicated?

This is complicated. Truthfully, this is difficult for me to keep straight in my mind. But you simply cannot arrest a person for a misdemeanor not committed in your presence, where no warrant has issued, unless it meets one of the above exceptions.

What Happens If You Violate GS 15A-401(b)?

If you violate GS 15A-401(b) while making such an arrest, then you will have made an illegal arrest, as you will have violated North Carolina statutory criminal procedure law.

Do I Have Any Advice For You?

My advice for you is this: learn, know, and keep the misdemeanor rules of arrest in mind when deciding when and how to make a misdemeanor arrest.

Anything Else?

And, oh yes – follow the rules!

An Aside

You know, I'm a Roman Catholic, and the rule of the Catholic Church is that any unmarried Catholic male is eligible to be elected Pope. Well, I've been married since 1968 so I was not eligible for the most recent election. But when a man is elected Pope, the new Holy Father chooses his own Papal name. If it had been me I was going to be known as Pope Butch the First.

Seriously, I think the College of Cardinals got wind of my idea, and that further disqualified me from consideration.

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