



A T T O R N E Y S

SMITH, RODGERS &
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TWO TOPICS: Two Topics in One Bulletin!

TOPIC ONE: The Possession of Any Amount of Cocaine a Felony!

By Ralph B. Strickland, Jr.

I Apologize For Being Remiss

In Roll Call Training Bulletin Volume II Number 21, November 10, 2003, we reported that the North Carolina Court of Appeals held that possession of cocaine under GS 90-95(d)(2) was a misdemeanor. The case was *State v. Jones*. I promised to report any changes in that decision. There was a change. I didn't report it immediately.

The Supreme Court of North Carolina Responded

On June 25, 2004, that court in a review of *Jones* held as follows: "We conclude that possession of cocaine is a felony and therefore reverse the decision of the Court of Appeals holding otherwise."

I Should Have Reported This Sooner. Sorry. However, it is now true that the possession of any amount of cocaine is a felony.

TOPIC TWO: Strangulation

By M. Kevin Smith & Gregory B. Rodgers

Amended Statute

The following statute has been amended to create the crime of strangulation in North Carolina. It is effective December 1, 2004. The underlined part is new. PLEASE NOTE: NEITHER "STRANGULATION" NOR "PHYSICAL INJURY" IS DEFINED IN THE STATUTE.

ROLL CALL TRAINING

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G.S. 14-32.4 reads as rewritten:

§ 14-32.4. Assault inflicting serious bodily injury; strangulation; penalties.

- a) Unless the conduct is covered under some other provision of law providing greater punishment, any person who assaults another person and inflicts serious bodily injury is guilty of a Class F felony. “Serious bodily injury” is defined as bodily injury that creates a substantial risk of death, or that causes serious permanent disfigurement, coma, a permanent or protracted condition that causes extreme pain, or permanent or protracted loss or impairment of the function of any bodily member or organ, or that results in prolonged hospitalization.
- b) Unless the conduct is covered under some other provision of law providing greater punishment, any person who assaults another person and inflicts physical injury by strangulation is guilty of a Class H felony.**

Comments for First-Line Supervisors

Strangulation is not defined in the statute or the famous Black’s Law Dictionary either, for that matter. But we have checked several dictionaries and here is our opinion of several adequate definitions.

1. Constriction of a body part so as to cut off the flow of blood; or
2. Inordinate compression or constriction of a tube or part, as of the throat, especially, such as causes a suspension of breathing; or
3. The act of suffocating (someone) by constricting the windpipe; or
4. The condition of having respiration stopped by compression of the air passage.

Since it is also not defined in the statute, as to what is necessary for a “physical injury” resulting from strangulation, we suspect that is a matter your local District Attorney will want to determine. It will probably be necessary that additional evidence of physical injury (bruising or ligature marks) other than the “mere” strangulation will be required to prove the offense.

Further Comments for First-Line Supervisors

Now, this is important: what may have once been a mere misdemeanor assault may now be a **felony!** Also, your detectives or investigators should be called in to further investigate – if there is enough evidence to prove strangulation, you may be able to prove assault with a deadly weapon with intent to kill inflicting serious bodily injury AND attempted homicide.

TIP OF THE DAY: AS THE ELEMENTS ARE DIFFERENT YOU CAN CHARGE BOTH ASSAULT WITH A DEADLY WEAPON WITH INTENT TO KILL INFLECTING SERIOUS BODILY INJURY AND ATTEMPTED HOMICIDE FOR THE SAME OFFENSE.

Effective December 1, 2004.

ON THE LIGHTER SIDE: effective August 17, 2004, G.S. 14-401.5 was repealed (which prohibits fortune telling, palmistry, etc. in certain counties.) So now you are free to have your palms read, or consult a phrenologist, with no fear of criminal charges. *Phrenology*, for those of you who are not currently a practicing headhunter, is the study of the shape and protuberances of the skull, based on the now discredited belief that they reveal character and mental capacity. This theory was discredited in 1967 when a study of Reece Trimmer’s head revealed ... nothing. Tell him Ralph said so.

SR&S Training July 22, Raleigh NC:

"Police/Sheriff Liability in North Carolina" Topics Include, Taser Legal Issues (Reece Trimmer), Involuntary Commitment and Child Custody Legal Issues (Ralph Strickland & Kevin Smith), Documenting Use of Force (Jon Blum, FORCE-Concepts, Inc.), and First Amendment Legal Issues for Law Enforcement Employers (Greg Rodgers).

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