



**A T T O R N E Y S**

**SMITH, RODGERS &  
STRICKLAND, PLLC**

*24 Hour Legal Support for Law Enforcement*

## **A Very Narrow Discussion on When a Law Enforcement Officer May Make an Arrest for a Misdemeanor Not Committed in His Presence and For Which No Warrant Has Yet Issued**

*By Ralph B. Strickland, Jr.*

*Kevin's Buddy, Greg's Pal, But Merely Tolerated by Trimmer*

### **Selected Parts of the Statute (Selected by me):**

Okay, folks, this Roll Call is a follow-up to Vol. IV No. 5 from May 5th. It may seem like the identical topic, but in fact we are going to elaborate and develop some of the “warrantless misdemeanor arrest” themes appearing there in a bit more detail, and with a slightly different format. We hope this follow-up will serve to answer numerous questions posed to us from alert readers around the State:

As we begin, please turn your minds to NCGS 15A-401. We will be reviewing (b)(2) which reads as follows:

(b) Arrest by Officer Without a Warrant. –

(2) Offense Out of Presence of Officer. – An officer may arrest without a warrant any person who the officer has probable cause to believe:

a. Has committed a felony; or

b. Has committed a misdemeanor, and:

1. Will not be apprehended unless immediately arrested, or

2. May cause physical injury to himself or others, or damage to property unless immediately arrested; or

c. Has committed a misdemeanor under G.S. 14-72.1, 14-134.3, 20-138.1, or 20-138.2; or

d. Has committed a misdemeanor under G.S. 14-33(a), 14-33(c)(1), 14-33(c)(2), or 14-34 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

e. Has committed a misdemeanor under G.S. 50B-4.1(a); or

f. Has violated a pretrial release order entered under G.S. 15A-534.1(a)(2).

### **Point 1**

You may always arrest for a felony so long as you have probable cause to believe a subject has committed one, with or without a warrant. There are a few limitations on this, such as when he is at home or a third-party residence, but generally he is arrestable warrantlessly. [I made up those last two words.]

## **ROLL CALL TRAINING**

*From North Carolina's 24/7 Police  
Attorney Law Firm*

PO Box 4803

Greensboro, NC 27404

Phone (336) 691-7058

Fax (336) 969-1879

[www.policehelp.net](http://www.policehelp.net)

**SEPTEMBER 11, 2005**

**VOLUME IV NUMBER 9**

## Point 2

You may always arrest for a warrantless misdemeanor so long as the subject will not be apprehended unless immediately arrested. You know, like he has no ID. Or an invalid ID. Or he is from another state or nation. Or you know he is being constantly called and failed in court. There are a few limitations on this, of course, such as certain misdemeanor traffic offenses committed by subjects from a state with a reciprocal agreement with North Carolina. I'll not discuss that, as I said this was a narrow subject area, and I meant it. Phhttt. [Made that one up, too.]

## Point 3

You may always arrest for a warrantless misdemeanor so long as the subject may cause physical injury to himself or others, or damage to property unless immediately arrested. Quite frankly, you must employ your training and experience and make an on-scene determination of arrest in these situations. I have suggested some guidelines to help you make that determination.

Such a subject would be one who is too intoxicated to operate a motor vehicle (as in DWI) or is just too drunk to walk around without getting hit by a car, or even having his illumination canceled and extinguished completely by another person. I'm sorry – I mean having his lights punched out.

I would not think you could arrest someone who has committed a misdemeanor and is in need of medical attention, where you are arresting him just so he can be treated medically. Call EMS and let them try and talk him into receiving treatment. Otherwise, he is free to decide for himself if he wants treatment, or would just rather drip on the carpet.

Of course if he tells you he is going to hurt himself, someone else, or damage property, arrest him. His admission of intent to commit such behavior is probable cause that he will commit it.

If the misdemeanor assault was somehow committed with a weapon, I believe you could arrest him on the grounds that it is probable that if not arrested, he will assault again (even though you have seized the weapon he used.) Most people with a gun or knife probably have another gun or guns or knife or knives. And they can always get a big stick. Lots of those in North Carolina.

Another factor to consider would be how irate the subject is – really mad people take longer to cool down than merely irritated people. If the subject is very angry, and shows no sign of calming down, then I believe that there is a fair probability that if not arrested, he will act out again immediately as soon as you are gone.

If you have been answering multiple calls on this subject in the recent past (day or two) or he has a history of retaliation against others who have filed complaints, there is a fair probability he will continue to commit crimes or hurt someone if not immediately arrested. Perhaps he exhibits behavior sufficient to reach the standards necessary for an involuntary commitment as he is dangerous to self or others. NCGS 122C-3(11) defines this phrase as (now hold your breath)

- (11) “Dangerous to himself or others” means:
  - a. “Dangerous to himself” means that within the relevant past:
    1. The individual has acted in such a way as to show:
      - I. That he would be unable, without care, supervision, and the continued assistance of others not otherwise available, to exercise self-control, judgment, and discretion in the conduct of

his daily responsibilities and social relations, or to satisfy his need for nourishment, personal or medical care, shelter, or self-protection and safety; and

- II. That there is a reasonable probability of his suffering serious physical debilitation within the near future unless adequate treatment is given pursuant to this Chapter. A showing of behavior that is grossly irrational, of actions that the individual is unable to control, of behavior that is grossly inappropriate to the situation, or of other evidence of severely impaired insight and judgment shall create a prima facie inference that the individual is unable to care for himself; or
  2. The individual has attempted suicide or threatened suicide and that there is a reasonable probability of suicide unless adequate treatment is given pursuant to this Chapter; or
  3. The individual has mutilated himself or attempted to mutilate himself and that there is a reasonable probability of serious self-mutilation unless adequate treatment is given pursuant to this Chapter. Previous episodes of dangerousness to self, when applicable, may be considered when determining reasonable probability of physical debilitation, suicide, or self-mutilation.
- b. “Dangerous to others” means that within the relevant past, the individual has inflicted or attempted to inflict or threatened to inflict serious bodily harm on another, or has acted in such a way as to create a substantial risk of serious bodily harm to another, or has engaged in extreme destruction of property; and that there is a reasonable probability that this conduct will be repeated. Previous episodes of dangerousness to others, when applicable, may be considered when determining reasonable probability of future dangerous conduct. Clear, cogent, and convincing evidence that an individual has committed a homicide in the relevant past is prima facie evidence of dangerousness to others.

Memorize all that. Test follows.

#### **Point 4**

You may always arrest for a warrantless misdemeanor so long as you have probable cause to believe that the subject has committed a crime under GS 14-72.1, Concealment of merchandise in a mercantile establishment (shoplifting in layman’s terms); GS 14-134.3, Domestic criminal trespass; GS 14-20-138.1, DWI; and GS 20-138.2, DWI in a commercial vehicle. Remember: only those particular misdemeanors are listed in the statute, and you are simply limited to them.

#### **Point 5**

You may always arrest for a warrantless misdemeanor so long as you have probable cause to believe that the subject has committed a crime under GS 14-33(a) Simple assault; GS 14-33(c)(1), Assault inflicting serious injury on another person or an assault on another person with a deadly weapon even though there is no serious injury; GS 14-33(c)(2), Assault on a female by a male 18 years of age or older; or GS 14-34, Assault by pointing a gun BUT ONLY WHERE THE ABOVE OFFENSES WERE COMMITTED BY A PERSON WITH WHOM THE ALLEGED VICTIM HAS A PERSONAL RELATIONSHIP AS DEFINED IN GS 50B-1. Now, just supposing that you might need the definition of a personal relationship as defined by GS 50B-1, here it is:

For purposes of this section, the term “personal relationship” means a relationship wherein the parties involved:

- (1) Are current or former spouses;
- (2) Are persons of opposite sex who live together or have lived together;
- (3) Are related as parents and children, including others acting in loco parentis [in the place of the parent (RBSjr)] to a minor child, or as grandparents and grandchildren. For purposes of this subdivision, an aggrieved party may not obtain an order of protection against a child or grand child under the age of 16;

- (4) Have a child in common;
- (5) Are current or former household members;
- (6) Are persons of the opposite sex who are in a dating relationship or have been in a dating relationship. For purposes of this subdivision, a dating relationship is one wherein the parties are romantically involved over time and on a continuous basis during the course of the relationship. A casual acquaintance or ordinary fraternization between persons in a business or social context is not a dating relationship.

## Point 6

You may always arrest for a warrantless misdemeanor so long as you have probable cause to believe that the subject has committed a crime under GS 50B-4.1(a), which naturally is defined as:

### § 50B-4.1. Violation of valid protective order.

- (a) Except as otherwise provided by law, a person who knowingly violates a valid protective order entered pursuant to this Chapter or who knowingly violates a valid protective order entered by the courts of another state or the courts of an Indian tribe shall be guilty of a Class A1 misdemeanor.

## Point 7

You may always arrest for a warrantless misdemeanor so long as you have probable cause to believe that the subject has violated a pretrial release order entered under GS 15A-534.1. That statute authorizes the release of a defendant from jail with certain conditions of release

In all cases in which the defendant is charged with assault on, communicating a threat to, or committing a felony provided in Articles 7A, 8, 10, or 15 of Chapter 14 of the General Statutes upon a spouse or former spouse or a person with whom the defendant lives or has lived as if married, with domestic criminal trespass, or with violation of an order entered pursuant to Chapter 50B, Domestic Violence, of the General Statutes, the judicial official who determines the conditions of pretrial release shall be a judge ...

Of course, if the person is in jail for 48 hours without appearing before a judge, the magistrate can set the release conditions. Always ask the victim if she knows the conditions of his release or has a copy of the release. *Then check with the magistrate's office.*

Dang! How *did* this baby get so long? As I was just saying to my probation officer, once I get started pal, I just can't seem to stop. In fact, Kevin is trying to grab the keyb k8djw "nsx ;;;;,dd



**Smith, Rodgers & Strickland PLLC**  
**provides 24-hour real-time legal support for client law enforcement agencies.**

"The materials on this website are instructional only, and do not constitute legal advice or create an attorney-client relationship. Readers should consult in-house counsel or city/county attorneys for advice and guidance on specific legal issues and applications. Clients of SR&S may of course contact the firm's 24-hour switchboard for immediate legal consultation in real-time."