

## The Legal Question Grab Bag

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### Assorted Answers to Unrelated Questions

By Brian Beasley, Tired of Trying To Decide On A Single Topic and Legal Adviser, High Point PD

You've probably heard people talk about a slow news day before. Right now in the legal office, we are experiencing a period of slow legal news. The legislature is not in session and there haven't really been any cases of note in the last few weeks. All of this makes it very difficult to find any material to support hilarious footnotes. Nevertheless, your legal adviser understands just how important these updates are to the day-to-day function of the department, so I've decided to tackle some of the smaller questions that have floated through the office recently. Fortunately for all of us, I have written down these questions on little slips of paper, meticulously folded each one, dropped them into an empty mayonnaise jar,<sup>1</sup> and will randomly select them and see if I can answer them here for everyone's benefit.

The first question has to do with DWI vehicle seizures:<sup>2</sup> **If I charge a driver with DWI and determine that his license has the ".04 restriction" and the driver does not have liability insurance, can I/should I/must I seize his vehicle under the DWI forfeiture law?**

Answer: **No.**

Question #2: Can you explain your answer to the first question?

Answer: **Yes.**

Okay, okay. As you know from a previous "Legal Question of the Week," there are two situations where a vehicle driven by a person charged with an impaired driving offense is subject to forfeiture under the DWI laws. The first is when the driver's license is revoked for an impaired driving license revocation. The second (and the one mentioned in the above question) is when the driver does not have a valid license and the driver is not covered by automobile liability insurance.

In this question, it is clear that the lack of insurance prong is met. What remains unclear is whether the driver has a valid license. Since the driver is operating the vehicle while in violation of the ".04 restriction," it could be argued that he is driving without a valid driver's license. However, after discussing this question with some officers and other lawyers,<sup>3</sup> I do not believe that argument is valid.

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<sup>1</sup> Some of you (the old ones) may be thinking that a child of four could plainly see that these items were hermetically sealed and the mayonnaise jar was kept on Funk & Wagnalls' front porch since noon today. Most of you have no idea what I'm talking about...ever.

<sup>2</sup> Remember that my July 18, 2008 Legal Question of the Week dealt entirely with DWI vehicle seizures.

<sup>3</sup> The voices in my head were surprisingly unanimous in their opinion.

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Consider this analogy provided by Ike Avery:<sup>4</sup> if a driver had a license restriction that required them to wear corrective lenses, you would not seize the vehicle if you caught them driving drunk without glasses or contacts. The .04 restriction is no different. Although it is technically NOL, the forfeiture statute says driving “without a valid driver’s license.” As a result, the vehicle is not subject to forfeiture under these circumstances. A court could rule otherwise in the future, but until then, I’ll stick with this answer.<sup>5</sup>

### Question #3: **What do I need to know about the “Washitaw Nation?”**

Answer: The Washitaw Nation<sup>6</sup> considers themselves to be “indigenous peoples” who are “descendants of Earth’s first humans”<sup>7</sup> and therefore sovereign to “every other individual, state, country or sovereign body, and . . . the world-at-large.” One of the ways they live out this belief is to profess a right to travel the common byways<sup>8</sup> of this land without the need for a driver’s license or vehicle registration.

Although they claim to not be citizens of the “corporation” that is the United States, they have recently begun filing lawsuits in U.S. federal court against police officers and municipalities claiming multiple violations of their rights under the U.S. Constitution and seeking millions of dollars in monetary damages. A recent filing in Greensboro made the news this past week and included a claim that the plaintiff/driver’s name was copyrighted and patented<sup>9</sup> and the officer violated copyright law by writing the name on a uniform citation. I have also heard that some of these folks tell law enforcement officers that they have obtained property liens on property owned by the officers, although I have yet to hear of or see an actual court filing or judgment for such a thing.

Regardless of the merits of the Washitaw Nation’s arguments,<sup>10</sup> there are two things you need to know about dealing with these folks:

1. Despite their protestations, you should continue to enforce North Carolina and United States law with respect to them. If you discover that any person, whether they claim to be Washitaw Nation or otherwise, is violating the laws of this state within your jurisdiction, you may charge that person with their crime subject to your discretion.<sup>11</sup>
2. More importantly, you should treat persons claiming to be members of the Washitaw Nation with the same respect and professionalism that you show to everyone else.<sup>12</sup> Avoid arguing with them. Simply charge them and tell them politely that they can contest the charge in court.

### **WAR STORY TANGENT ALERT!**

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<sup>4</sup> Ike is a retired Special Deputy Attorney General who served for 28 years as the supervising attorney for the Crime Control Section of the N.C. Attorney General’s Office which provides legal advice and civil defense to the N.C. State Highway Patrol. If I have a traffic law related question that I don’t know the answer to, I check with him.

<sup>5</sup> On a side note, if the driver had an ignition interlock system and was driving drunk, state law says that this is driving while license revoked – so the vehicle may be seized in that situation.

<sup>6</sup> Much of this information comes from a Washitaw Nation webpage located at

<http://www.organicwellness.com/washitawnation/nation.htm> Thanks to Officer Chris DeLong for the link.

<sup>7</sup> I would imagine that we are all descendants of Earth’s first humans. That’s not only a religious belief but a logical certainty, isn’t it? Unless you believe in science fiction shows like “V” or “Stargate,” I guess.

<sup>8</sup> “Streets and highways” in layman’s terms.

<sup>9</sup> Under U.S. patent and copyright law I’m guessing.

<sup>10</sup> Aren’t you proud of how tactful I can be?

<sup>11</sup> This means charge them unless you think there’s a good reason not to do so.

<sup>12</sup> Unless you are usually a jerk, in which case you should stop doing that. Also, Professional Standards would like to speak with you.

The Washitaw Nation situation reminds me of a guy I dealt with many years ago as a Durham prosecutor. Ray Ubinger was a Libertarian political candidate back when it was extremely difficult for members of the Libertarian party to get their names officially on the ballot. Ubinger cast a write-in vote for himself in the 1998 Durham County Commissioners election which under state law was not counted (because it was a write-in vote.) Mr. Ubinger claimed that the failure to count his vote “disenfranchised” him from the United States and thereafter refused to submit himself to the U.S. Government.

This refusal to submit played out in two major ways: (1) Ubinger refused from then on to pay the fee to get his vehicle registered or to get his driver’s license renewed, but he kept driving, and (2) this led to him appearing in court quite often on charges of NOL (and later driving while license revoked) and expired registration. Whenever you would ask Mr. Ubinger for his plea to the charges, he would shout “No Jurisdiction!”<sup>13</sup> He would get convicted in traffic court and then appeal to Superior Court for a jury trial. His situation finally resolved itself when the Superior Court judge who found himself about to have the pleasure of presiding over a jury trial for driving with an expired registration was thinking<sup>14</sup> to himself about how much jail time would be appropriate for Mr. Ubinger should he be convicted of this heinous crime. Mr. Ubinger happened to overhear<sup>15</sup> and finally found a plea that WAS a valid option and that started with a “g.”<sup>16</sup>

Ladies and Gentlemen, I hold in my hand . . . the last envelope...

Question #4: **Does a landlord have the right to ban a person from the property when he is an invited guest of a tenant?**

Answer: No. The 1888<sup>17</sup> North Carolina Supreme Court case of State v. Lawson<sup>18</sup> held that a tenant has the right “to invite such persons as his business, interest, or pleasure might suggest to come upon the premises . . . for any lawful purpose” regardless of the landlord’s disapproval. If the landlord tells the person to stay away, but the lawful tenant invites the person onto the property, there is no trespass.

Common areas at, for example, an apartment complex, are a little bit trickier. There’s no North Carolina case law directly on point here, but I would find it difficult to believe that the right of the tenant to invite a person would not also extend to the person being allowed to use the common areas to come and go from the tenant’s property.<sup>19</sup> However, it will still be trespass if the guest lingers in the common areas or is present in common areas for purposes other than coming or going according to case law in other jurisdictions.

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<sup>13</sup> This, of course, was not one of the available choices which consisted of Guilty, Not Guilty, or Motion (for a continuance). Some folks would attempt to plead “Guilty with an Explanation” but I would generally not accept that. I did once accept a plea of “Guilty with an Exclamation!” from an intoxicated defendant but that was a one-time occurrence.

<sup>14</sup> Out loud.

<sup>15</sup> Because the judge was thinking VERY loudly and court was in session at the time.

<sup>16</sup> My point is this: “eccentric” isn’t a new phenomenon and it isn’t going away anytime soon. On another occasion, Mr. Ubinger wore a big metal breastplate to the courthouse to protest having to walk through a metal detector. He believed that this was an unreasonable search and seizure.

<sup>17</sup> That’s not a typo. This is an OLD case, but still good law.

<sup>18</sup> 101 N.C. 717 (1888).

<sup>19</sup> Otherwise, the guest would have to airdrop into the apartment or be thrown into an open window or some other creative solution.

That's enough for now. Keep the questions coming. And if anyone gives you any trouble, may a rabid holyman bless their nether regions with a power tool.<sup>20</sup>

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**ABOUT THE AUTHOR: Brian Beasley is the Legal Advisor for the High Point Police Department. This legal update is provided free of charge to the SR&S Webpage in the hopes that officers across the state would be able to benefit from it. Brian is not an attorney with Smith, Rodgers, & Strickland, PLLC but he thinks they're pretty cool guys.**



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<sup>20</sup> The references you don't understand in this update come from Carnac the Magnificent, one of Johnny Carson's famous characters from the Tonight Show. I realize Carson was like three or four hosts ago, but this was funny stuff.