

THE LEGAL TWO
A Legal Memo from
Ralph B. Strickland, Jr.
Been There, Done That
Brian Beasley
Got the Tee Shirts

[Brian is the Police Attorney for the High Point Police Department and Uncle Ralph is the Legal Advisor to the Cumberland County Sheriff's Office.]

LISTEN:
**SOMETIMES A CONVICTED FELON MAY NOW POSSESS
A FIREARM IN NORTH CAROLINA. OH, YES.
HOWEVER, THOSE FELONS WILL BE FEW AND, AS THEY
SAY, FAR, FAR, SO VERY FAR BETWEEN.**
"They," of course, being us. We say so. We do; we do.

It was a dark and stormy night. Brian turned to Ralph.

Brian: Mr. Wonderful, what is your favorite hymn?

Ralph: Why *Amazing Grace*, of course, my dear Brian. "I once was lost, but now I'm found." Just think of that, Brian; *think of what that means!* Pray tell, advocate of the law officer, counselor to the lost and friendless, my friend and pal, what is your favorite ode to worship?

Brian: It is incredibly hard to pick just one, but one that comes to mind is "A Mighty Fortress Is Our God," written by the great Martin Luther. "Let goods and kindred go; this mortal life also. The body they may kill; God's truth abideth still; His kingdom is forever." In fact, I have read that Luther's hymns inspired the development of singing in churches. I suppose that if Luther were alive today, he would have posted his famous 95 theses on his blog instead of nailing them to the door of the church.

Ralph: Which brings us in an incredibly round about way to *Britt v. The State of North Carolina*, a decision of the North Carolina Supreme Court on August 28, 2009 which will be unpopular among those in the law enforcement community and from which the attorneys advising that community may draw different conclusions and offer different advice. [Please remember we said this.]

Brian: Yes, Mr. Impeccably Average, in your outlandishly run-on way, you have once again inadvertently hit the nail on the head. However, we agree on our advice and that should be a comfort to many.

Ralph: Well, of course, our opinion is merely our opinion, no matter how correct and unmistakable we may be, if I may speak with less than a humble demeanor.

Brian: Which you appear to have clearly so done, ye with the bristling nostril hair. But, I digress. The facts Mr. Awesomely Winsome are these.

1. In 1979 Mr. Britt was convicted of a drug felony that was non-violent and did not involve a firearm.
2. After serving a short active term in DOC he completed probation in 1982.
3. Under the law at that time his full civil rights were returned to him, including his right to possess a firearm.
4. The statute then, as now, was GS 14-415.1
5. In 1995 that statute was amended to prohibit any convicted felon from possessing a firearm unless he was in his home or place of business.
6. In 2004 that statute was again amended to make it unlawful for any felon to possess any firearm at any place in North Carolina, making the statute almost the same as the federal felony firearms statute.
7. Mr. Britt then spoke with Sheriff Harrison in Wake County, his home county, and the sheriff honestly told him that if Mr. Britt kept his firearms in his possession that the sheriff would have to arrest him.
8. Mr. Britt divested himself of all his hunting rifles and shotguns he used to hunt on his own land in Wake County.
9. Mr. Britt had been a very good citizen since his drug conviction in 1979 and had never been shown to be anything but responsible with firearms and was a law abiding citizen.
10. Mr. Britt's attorney, Dan Hardway, filed a lawsuit against the State of North Carolina contending that the 2004 amendment to GS 14-415.1 violated something known as the United States Constitution and also the well-known and often discussed North Carolina Constitution, Article I, Section 30, we know it well, as it applied to his client, Mr. Britt.

Ralph: And the North Carolina Supreme Court, with two dissenting votes, and five justices in the majority, held for Mr. Britt on the basis of the North Carolina Constitution?

Brian: Apparently so, Uncle Ralphie. And, the Supreme Court held that its decision applied only to the plaintiff of this civil action, Mr. Britt.

Ralph: Poppycock and balderdash on both counts! Why a dissenting justice stated, and I quote: "Because the majority has crafted an individualized exception for a sympathetic plaintiff, thereby placing North Carolina in the unique position of being the first jurisdiction, either federal or state, to hold that the inherent police power of the State must yield to a convicted felon's right to own a firearm, I respectfully dissent. Plaintiff's right to possess a firearm is not absolute, but subject to regulation.

The Felony Firearms Act at issue is a reasonable regulation of the right to bear arms, both facially and as applied to plaintiff.”

Now Brian, you and I, as former assistant district attorneys, know that this case has an application to all criminal defendants similarly situated as Britt and not just lonely, forlorn Master Britt, don't we?

Brian: That we do, Mr. Dynamic.

Ralph: Thusly, we need a rule for our law enforcement officers in Cumberland County and the City of High Point to follow and keep in line with the Britt decision, wouldn't you say?

Brian: Oh, I would; I would say.

THE FAMOUS BRIAN/RALPH RULE FOR FELONS WHO MAY LAWFULLY POSSESS A FIREARM UNDER THE FELONY FIREARM STATUTE IN NORTH CAROLINA GENERAL STATUTES CHAPTER 14-415.1 AFTER THE DECISION IN *BRITT V. THE STATE OF NC* ON AUGUST 28, 2008

If a person:

- 1. was convicted of a nonviolent felony prior to 1995; and**
- 2. completed his sentence without incident prior to 1995; and**
- 3. had his right to possess firearms restored prior 1995; and**
- 4. there is no evidence which would indicate that plaintiff is dangerous or has ever misused firearm he possessed, either before his crime or after 1995; and**
- 5. has affirmatively demonstrated throughout his life that he is not among the class of citizens who pose a threat to public peace and safety -**

Then and only may he possess a firearm in North Carolina under the *Britt* decision.

Ralph: So say we?

Brian: We do so say.

Ralph: So, this is still a very complicated rule to apply, especially when the folks we advise will not always have the necessary facts to make such a decision when they confront a person with one nonviolent felony conviction prior to 1995, who has a firearm on or about his person or in his possession, and especially at night, during the dark, creepy, lonely Stygian night. Yikes!

Brian: Yes and even though our folks can contact us, if for any reason they cannot, I suggest if there is a question of legality about the possession of a firearm under the *Britt* decision, that they merely seize the firearm, place it in evidence and discuss the case with us when they can.

Ralph: Oh absolutely. Then we can either advise an arrest under GS 14-415.1 if we think it appropriate, or advise the return of the firearm to the owner if we conclude that a criminal charge should not be made. You agree?

Brian: Sure.

It was no longer a dark and stormy night – still creepy, though.