



Does a No Contact Order Apply While the Defendant Is in Jail?

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When setting conditions of pretrial release in domestic violence cases, magistrates and judges often order a defendant not to contact the victim. Those directives clearly apply to a defendant once he is released from jail subject to those conditions. But what about a defendant who remains in jail? Is he also subject to a no contact condition included on a release order? The court of appeals addressed that issue yesterday in [State v. Mitchell](#).

The court in *Mitchell* concluded that the no contact directive set forth on Mitchell's release orders (he was charged with more than one crime for allegedly assaulting his girlfriend) applied to Mitchell while he was confined in jail. Thus, Mitchell's mailing of letters to his girlfriend from jail violated a court order. And because the letters amounted to stalking, Mitchell's conduct was felonious since there was a court order in effect (the pretrial release orders) prohibiting his conduct.

Facts. Mitchell was arrested for assault on a female on December 26, 2014 after he allegedly punched his girlfriend, "Nancy," in the face. At his initial appearance, the magistrate wrote on the [AOC-CR-200](#), Conditions of Release and Release Order form, that he was "NOT TO HAVE ANY CONTACT WITH [NANCY]." Mitchell's release was not authorized that evening because he was charged with a domestic violence offense for which only a judge could set pretrial release conditions during the first 48 hours following his arrest. Two days later, a judge authorized Mitchell's release upon the posting of a secured bond. The judge, like the magistrate, ordered that Mitchell have no contact with the victim.

A week later, while Mitchell remained in jail, he was charged in an arrest warrant with habitual misdemeanor assault for the alleged December 26 assault of Nancy. The Conditions of Release and Release Order issued in connection with this charge imposed a secured bond and ordered Mitchell "NOT TO HAVE ANY CONTACT WITH [NANCY]." Mitchell did not post bond and remained jailed on both charges.

Mitchell wrote six letters to Nancy from jail while he was subject to conditions of release orders for one or both of these charges. The first letters were "cordial," but the later letters "escalated to threats when she did not respond or reply." Slip op. at 5. Nancy also received a letter marked "return to sender" that listed her return address. The letter was addressed to the Federal Building on Fayetteville Street in Raleigh and contained a bomb threat and demand for \$1 million, purportedly written by Nancy. The defendant later admitted to writing the letter.

In March 2015, the Wake County District Attorney's Office received a letter through "jail mail" from the Wake County Detention Center that purported to be written by Nancy. The letter stated that Nancy had falsely accused Mitchell and threatened to place explosives in the Wake County Courthouse. Nancy denied sending the letter.

Mitchell was charged with felony stalking while a court order was in effect for the letters to Nancy and with two counts of felony obstruction of justice based on the letters to the Federal Building and the District Attorney's office.

Felony stalking. [G.S. 14-277.3A](#) defines the offense of stalking, which generally is a Class A1 misdemeanor. If, however, stalking is committed "when there is a court order in effect prohibiting the conduct described under [G.S.

14-277.3A] by the defendant against the victim,” the offense is elevated to a Class H felony.

Defendant’s argument. Mitchell moved to dismiss the felony stalking charges on the basis that he was not subject to the conditions of pretrial release that prohibited him from having contact with Nancy because he never posted his bond. Instead, he remained in jail during the entire time the letters were sent. Since he was not released, he said that the order did not apply to him.

Court’s analysis. Calling Mitchell’s argument “deceptively simple,” the court rejected it. Slip op. at 9. The court noted that the orders, titled “Conditions of Release and Release Order,” contained more than their title suggested. In addition to establishing conditions of release, the orders committed Mitchell to a detention facility (as required by [G.S. 15A-521\(a\)](#)), noted that he was subject to a domestic violence hold, directed when the defendant was to again be produced before a judicial official (as required by G.S. 15A-521(b) and [G.S. 15A-534.1](#)), and, for one of the orders, required that Mitchell provide fingerprints.

Such orders, the court of appeals said, “memorialize[] the trial court’s determinations governing the defendant, whether the defendant is held in a detention facility or released.” Slip op. at 12. Some of the terms of such an order, the court explained, apply whether a defendant is committed or released, while others apply only in one circumstance or another.

The court stated that the directive in the *Mitchell* orders that Mitchell have no contact with Nancy contained no language indicating that the provision applied only upon Mitchell’s release. Thus, the court concluded, contact with Nancy was barred as long as the orders were in effect. And the orders were in effect until the charges were disposed of, whether Mitchell remained confined in jail or was released.

The stalking enhancement. The court further held that Mitchell’s stalking was felonious because the pre-trial release orders barring Mitchell from contacting Nancy “prohibit[ed] the conduct described under [G.S. 14-277.3A] by the defendant against the victim.”

The court reasoned: Conduct described in G.S. 14-277.3A includes harassment, which requires “[k]nowing contact” that may consist of “written or printed communication.” Mitchell was ordered not to contact Nancy. Because harassment under G.S. 14-277.3A requires contact, the orders prohibited conduct under G.S. 14-277.3A, even though they did not specifically mention stalking.

The court said its view that the no contact order prohibited conduct described in the stalking statute was “in keeping with the intent” of the stalking statute, which provides in part: “[T]he General Assembly enacts this law to encourage effective intervention by the criminal justice system before stalking escalates into behavior that has serious or lethal consequences. The General Assembly intends to enact a stalking statute that permits the criminal justice system to hold stalkers accountable for a wide range of acts, communications, and conduct.” Slip op. at 15 (citing G.S. 14-277.3A(a)).

Practical effect. The *Mitchell* court did not identify the source of a judicial official’s authority to impose conditions upon a person that apply while the person is detained, but its analysis assumes such authority exists. *Cf. Baker v. United States*, 891 A.2d 208 (D.C. Cir. 2006) (declining to decide whether trial court that ordered defendant preventatively detained had the authority to issue a no-contact order under the bail statute or pursuant to the court’s inherent authority). That issue has been the subject of considerable debate in the trenches (see Jeff’s post [here](#)), so its resolution is significant, particularly given the frequency with which no contact conditions are imposed.

The court also did not address what limitations exist on a judicial official’s authority to impose such conditions. While Mitchell’s post-arrest conduct leaves little doubt about the need for such a restriction in his case, it is not clear what standard judicial officials are to use in crafting general conditions regulating the conduct of a defendant both in and out of jail. *Cf. G.S. 15A-534(a)* (permitting a judicial official to “place restrictions on the travel, associations, conduct, or

place of abode of the defendant **as conditions of pretrial release** (emphasis added); G.S. [15A-534.1\(a\)\(2\)](#)(permitting a judge to impose, among other “pretrial release” conditions, a condition that the defendant “stay away from the home, school, business or place of employment of the alleged victim”).

Most violations of no contact orders do not, of course, result in statutorily enhanced charges like those in *Mitchell*. Instead, they are more often addressed through contempt proceedings under Chapter 5A. *Cf. Baker*, 891 A.2d at 212 (stating that “even assuming for the sake of argument that the trial court’s no-contact order was invalid, Baker’s conviction for contempt must be upheld for his failure to comply with that order” which he did not challenge or appeal). After *Mitchell*, I expect that magistrates and judges will continue to impose such conditions (though they may wish to specify whether they apply in jail as well as upon release) and that contempt proceedings will continue to be initiated for defendants who do not follow them.

Thanks to my colleague John Rubin for helping me think through the issues in State v. Mitchell and for teaching me everything I know about pretrial release.