

DV Relationships

Brittany Bromell
UNC School of Government

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Roadmap

- G.S. 50B**
 - Covered acts and relationships
 - More about the relationships
 - Examples
- G.S. 15A-534.1**
 - Covered acts and relationships
 - More about the relationships
 - Examples
- New G.S. 14-32.5**
 - Covered acts and relationships
 - More about the relationships
 - Examples

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G.S. 50B-1

The commission of certain acts against a person (“the victim”) or against a child who is living with or in the custody of the victim, by a person who has or has had a personal relationship with the victim.

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Acts	Relationships
<ul style="list-style-type: none"> Attempting to cause or intentionally causing bodily injury Placing the victim, or a member of the victim’s family or household in fear of imminent serious bodily injury Continued harassment that causes substantial emotional distress Committing rape or other sex offenses 	<ul style="list-style-type: none"> Current or former spouses People of the opposite sex who live or have lived together Parent and child or grandparent and grandchild Parents with a child in common Current or former household members People of the opposite sex who are or have been in a dating relationship

G.S. 50B-1

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Where both are present...

The victim/complainant is eligible for a Domestic Violence Protective Order (DVPO).

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No time limit

- Former spouses
- People of the opposite sex who have lived together
- Former household members
- People who have been in a dating relationship

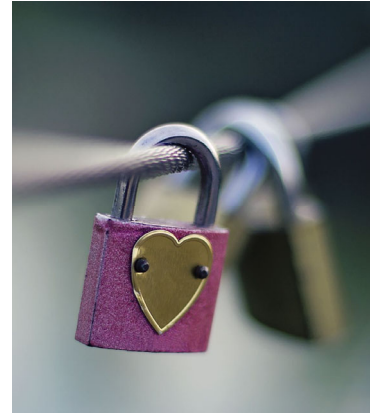
• No outer limit for how long ago the parties were in the covered relationship

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Dating relationships

"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."



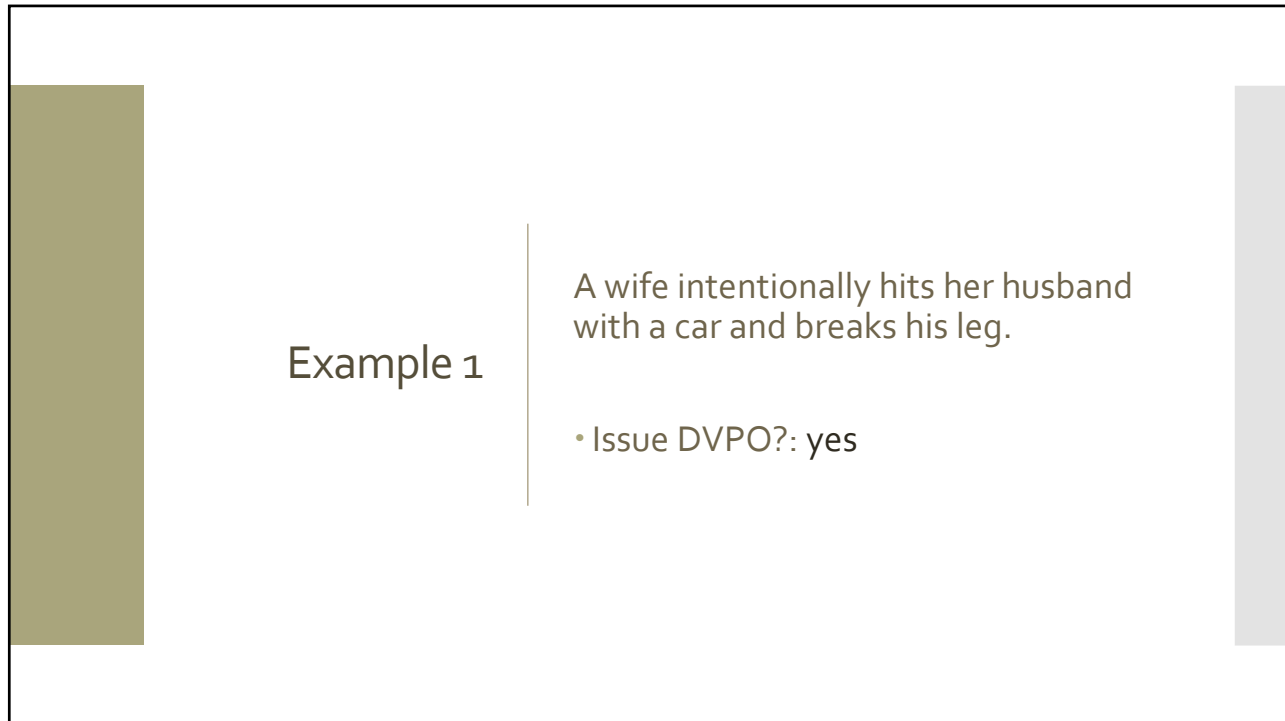
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Dating relationship: Factors to consider

1. Was there a minimal social interpersonal bonding of the parties over and above that of mere casual acquaintances or ordinary fraternization?
2. How long did the alleged dating activities continue prior to the acts of domestic violence alleged?
3. What were the nature and frequency of the parties' interactions?
4. What were the parties' ongoing expectations with respect to the relationship, either individually or jointly?
5. Did the parties demonstrate an affirmation of their relationship before others by statement or conduct?
6. Are there any other reasons unique to the case that support or detract from a finding that a "dating relationship" exists?

Thomas v. Williams, 242 N.C. App. 236 (2015) (quoting *Andrews v. Rutherford*, 363 N.J.Super. 252, (CH.DIV.2003))

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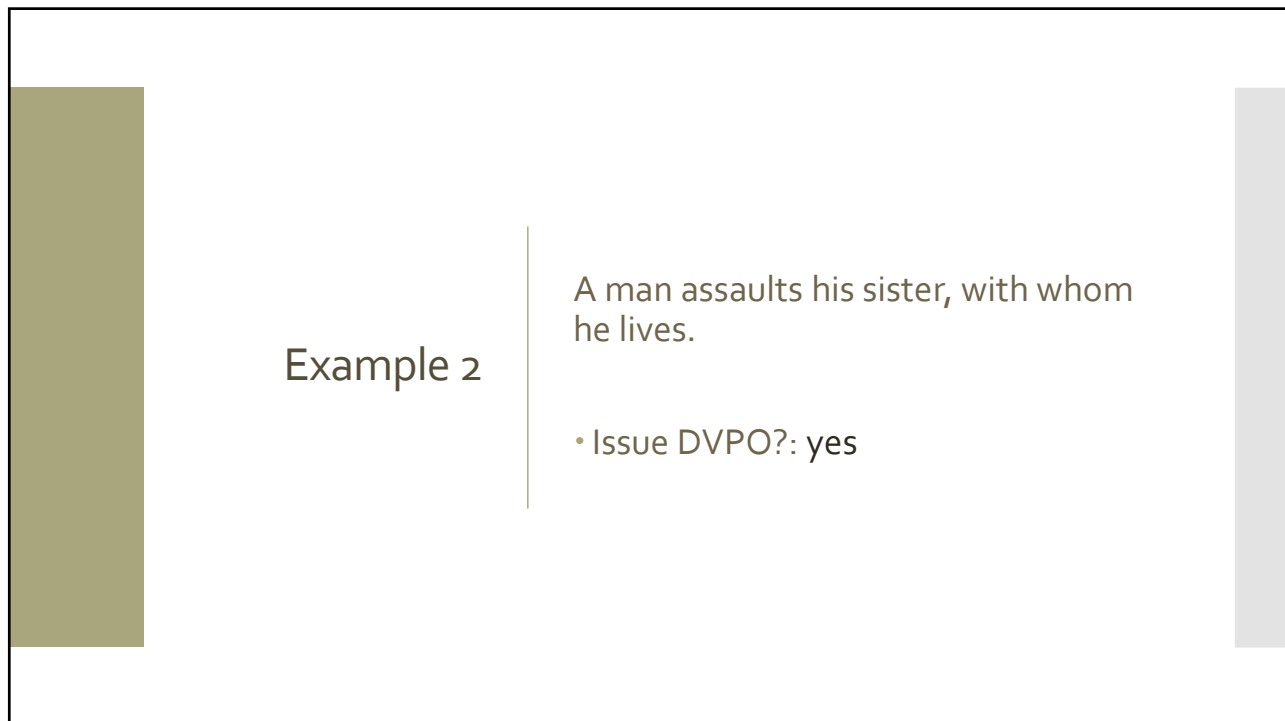
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Example 1

A wife intentionally hits her husband with a car and breaks his leg.

- Issue DVPO?: yes

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Example 2

A man assaults his sister, with whom he lives.

- Issue DVPO?: yes

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Example 3

A man meets a woman for the first time at a bar, invites her to his house and rapes her.

- Issue DVPO?: no

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Example 4

An ex-boyfriend stalks a woman, constantly sending threatening messages and showing up to her home.

- Issue DVPO?: maybe

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Example 5

A man trespasses on the property of his ex-wife and her new husband.

- Issue DVPO?: not without more

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G.S. 15A-534.1

A matter is considered a domestic violence crime if the defendant commits certain crimes against “a spouse or former spouse, a person with whom the defendant lives or has lived as if married, or a person with whom the defendant is or has been in a dating relationship as defined in G.S. 50B-1(b)(6).”

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Acts requiring a relationship	Relationships
<ul style="list-style-type: none"> • Assaults • Stalking • Communicating threats • Rape and other sex offenses • Kidnapping and abduction • Arson and other burnings 	<ul style="list-style-type: none"> • Spouse or former spouse • Person with whom the defendant lives or has lived as if married • Person with whom the defendant is or has been in a dating relationship
Acts that do not require a relationship	
<ul style="list-style-type: none"> • Domestic criminal trespass • Violation of a 50B order 	

G.S. 15A-534.1

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Where both
are
present...

- ... “the judicial official who determines the conditions of pretrial release shall be a judge.”
- Conduct the initial appearance but do not set PTR conditions
- Order that the person be taken to the first available court session in the county
- Order that the person be returned to a magistrate if a judge does not set PTR conditions within 48 hours after arrest

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No time limit

- Former spouses
- Person with whom the defendant has lived as if married
- Person with whom the defendant has been in a dating relationship

• No outer limit for how long ago the parties were in the covered relationship

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Tough calls

As-if relationships

- Fiancés?
- Domestic partners?
- Dating and cohabitating?

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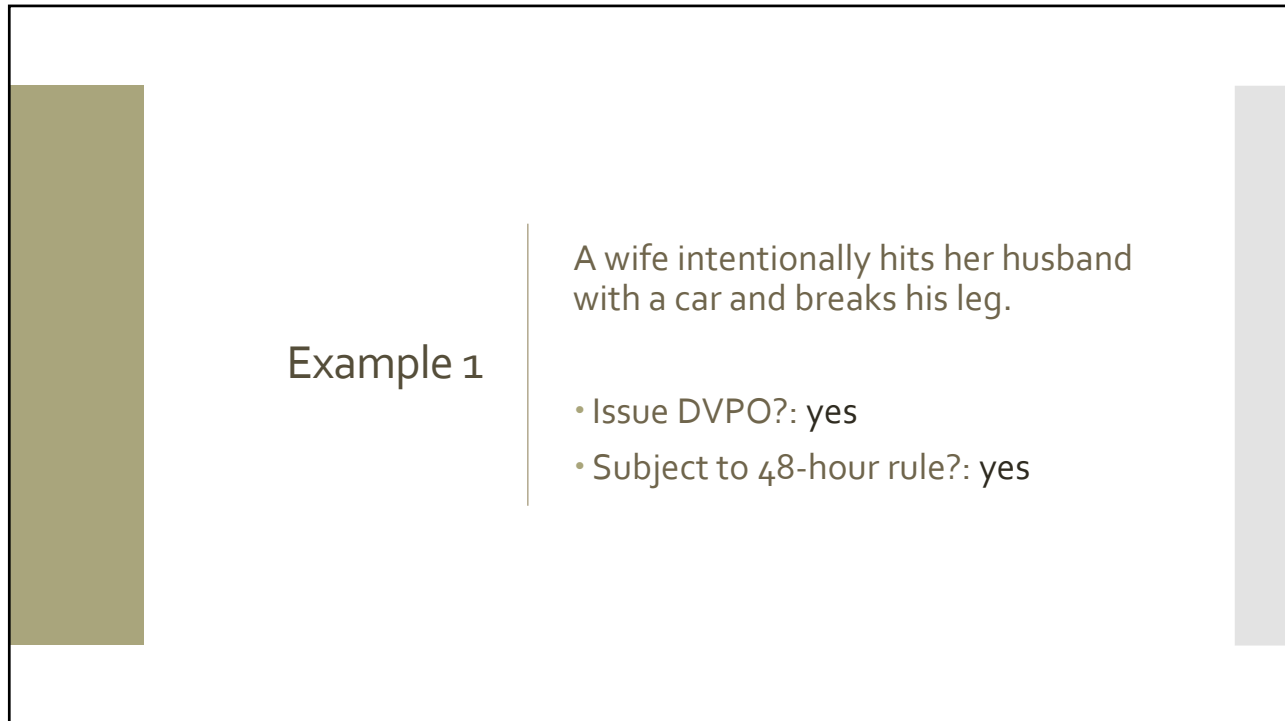
G.S. 50B Relationships	G.S. 15A-534.1 Relationships
<ul style="list-style-type: none"> • Current or former spouses • People of the opposite sex who live or have lived together • Parent and child or grandparent and grandchild • Parents with a child in common • Current or former household members • People of the opposite sex who are or have been in a dating relationship 	<ul style="list-style-type: none"> • Spouse or former spouse • Person with whom the defendant lives or has lived as if married • Person with whom the defendant is or has been in a dating relationship

Let's compare

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G.S. 50B Relationships	Covered in both	G.S. 15A-534.1 Relationships
<ul style="list-style-type: none"> • People of the opposite sex who live or have lived together • Parent and child or grandparent and grandchild • Parents with a child in common • Current or former household members 	<ul style="list-style-type: none"> • Current or former spouses • People who are or have been in a dating relationship 	<ul style="list-style-type: none"> • Person with whom the defendant lives or has lived as if married
Victim eligible for DVPO	<p style="text-align: center;">Victim eligible for DVPO and Defendant committed to jail until PTR conditions are set by judge or until returned to magistrate after 48 hours</p>	<p style="text-align: center;">Defendant committed to jail until PTR conditions are set by judge or until returned to magistrate after 48 hours</p>

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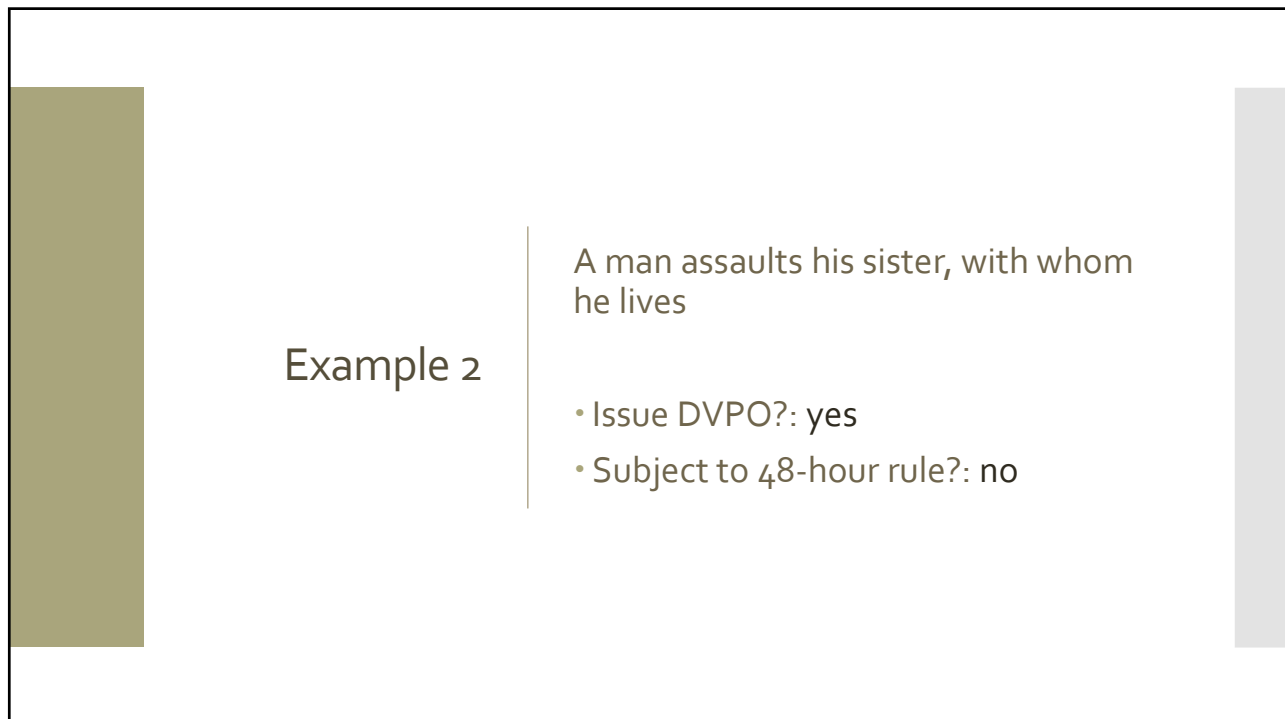
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Example 1

A wife intentionally hits her husband with a car and breaks his leg.

- Issue DVPO?: yes
- Subject to 48-hour rule?: yes

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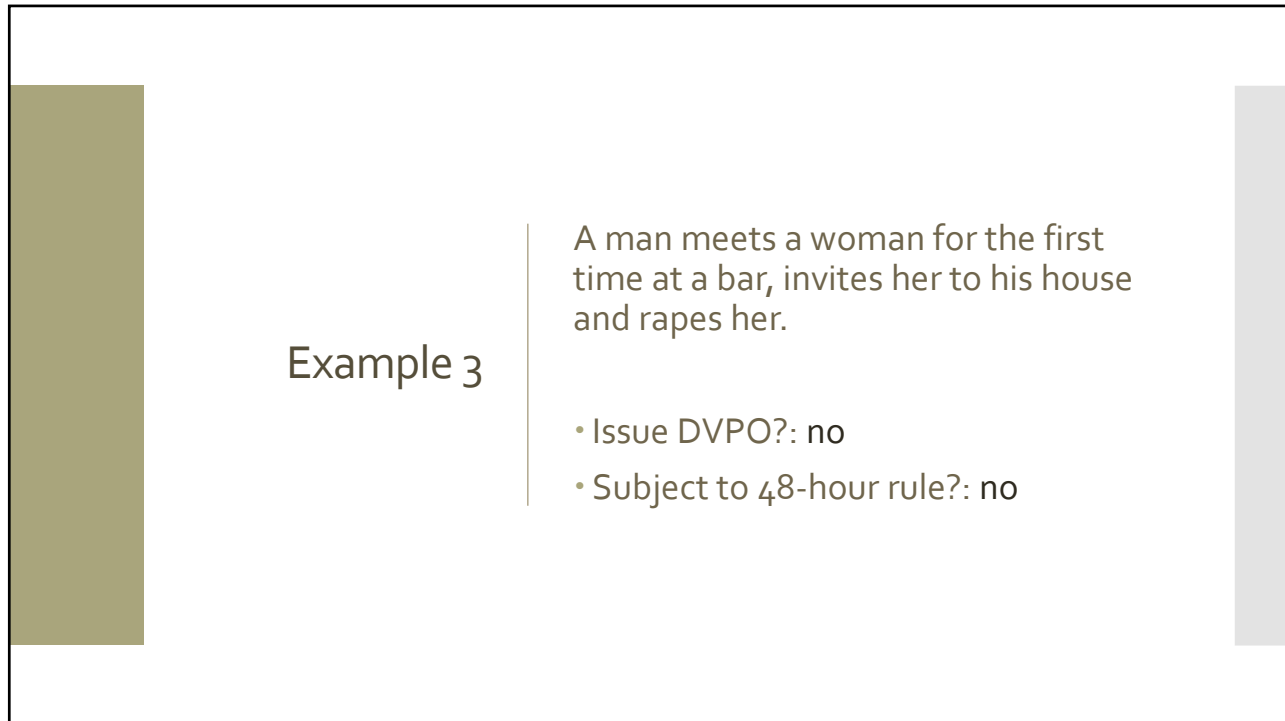
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Example 2

A man assaults his sister, with whom he lives

- Issue DVPO?: yes
- Subject to 48-hour rule?: no

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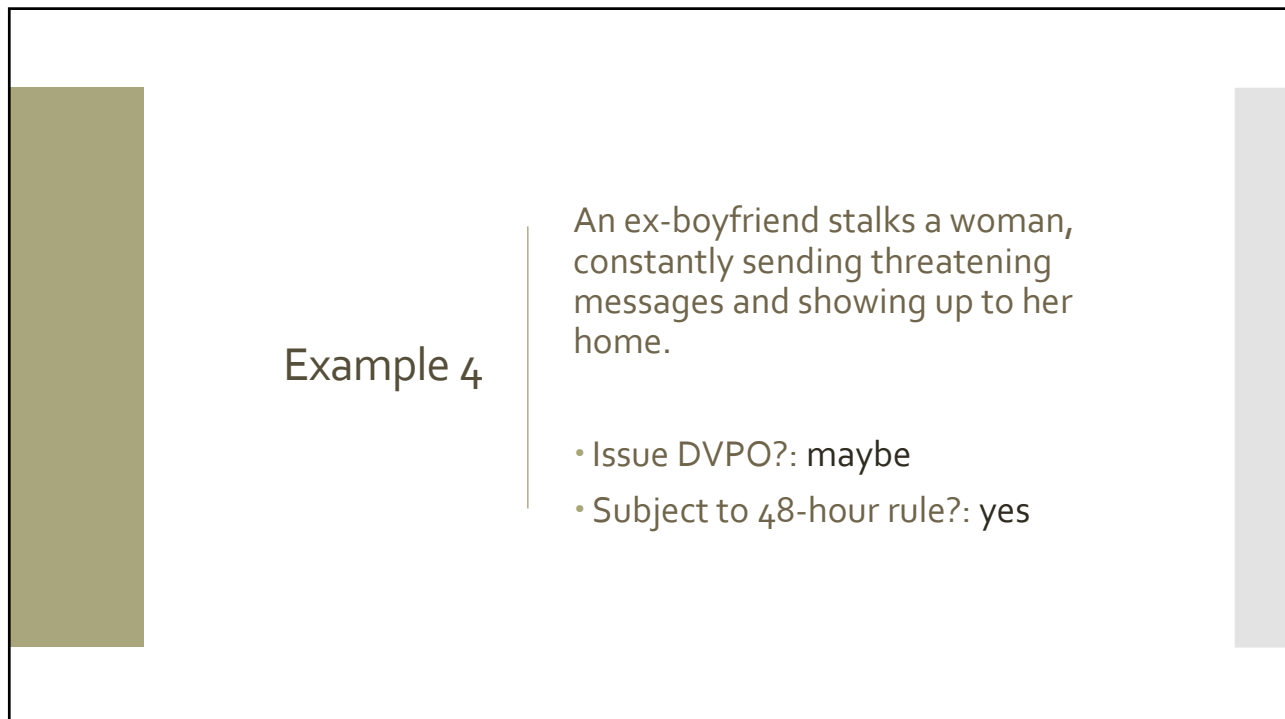
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Example 3

A man meets a woman for the first time at a bar, invites her to his house and rapes her.

- Issue DVPO?: no
- Subject to 48-hour rule?: no

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Example 4

An ex-boyfriend stalks a woman, constantly sending threatening messages and showing up to her home.

- Issue DVPO?: maybe
- Subject to 48-hour rule?: yes

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Example 5

A man trespasses on the property of his ex-wife and her new husband

- Issue DVPO?: not without more
- Subject to 48-hour rule?: yes

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New G.S. 14-32.5

“A person is guilty of a Class A1 misdemeanor if that person uses or attempts to use physical force, or threatens the use of a deadly weapon, against another person” ... with certain relationships

- Effective for offenses committed on or after December 1, 2023

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Acts	Relationships
<ul style="list-style-type: none"> • Use or attempt to use physical force • Threatens the use of a deadly weapon 	<ul style="list-style-type: none"> • A current or former spouse, parent, or guardian of the victim. • A person with whom the victim shares a child in common. • A person who is cohabitating with or has cohabitated with the victim as a spouse, parent, or guardian. • A person similarly situated to a spouse, parent, or guardian of the victim. • A person who has a current or recent former dating relationship with the victim.

G.S. 14-32.5

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Where both
are
present...

Defendant may properly be charged with a Class A1 misdemeanor under new G.S. 14-32.5 offense.

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Why does it matter?

Expands the list of people who could be charged with Class A1 misdemeanors for acts of simple assault

The only NC misdemeanor assault offense that would count for the federal gun disqualification under 18 U.S.C. 922(g)(9)

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No time limit

- A former spouse, parent, or guardian of the victim
- A person who has cohabitated with the victim as a spouse, parent, or guardian
- No outer limit for how long ago the parties were in the covered relationship

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BUT:

- A person who has a **recent** former dating relationship with the victim.
- Outer limit is not yet defined

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Dating relationship

Is as defined in 18 USC 921:

- "A relationship between individuals who have or have recently had a continuing serious relationship of a romantic or intimate nature."
- "A casual acquaintanceship or ordinary fraternization in a business or social context does not constitute a dating relationship."

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Dating relationship

18 USC 921(a)(37)(B):

- Factors to consider in determining whether a relationship constitutes a dating relationship:
 - the length of the relationship;
 - the nature of the relationship; and
 - the frequency and type of interaction between the individuals involved in the relationship.

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G.S. 50B Relationships	G.S. 15A-534.1 Relationships	G.S. 14-32.5 Relationships
<ul style="list-style-type: none"> • Current or former spouses • People of the opposite sex who live or have lived together • Parent and child or grandparent and grandchild • Parents with a child in common • Current or former household members • People of the opposite sex who are or have been in a dating relationship 	<ul style="list-style-type: none"> • Spouse or former spouse • Person with whom the defendant lives or has lived as if married • Person with whom the defendant is or has been in a dating relationship 	<ul style="list-style-type: none"> • A current or former spouse, parent, or guardian of the victim. • A person with whom the victim shares a child in common. • A person who is cohabitating with or has cohabitated with the victim as a spouse, parent, or guardian. • A person similarly situated to a spouse, parent, or guardian of the victim. • A person who has a current or recent former dating relationship with the victim.
Victim eligible for DVPO	Defendant committed to jail until PTR conditions are set by judge or until returned to magistrate after 48 hours	Defendant charged with Class A1 misdemeanor under G.S. 14-32.5

Let's compare

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Example 1

A wife intentionally hits her husband with a car and breaks his leg.

- Issue DVPO?: yes
- Subject to 48-hour rule?: yes
- Charged under G.S. 14-32.5?: yes

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Example 2

A man assaults his sister, with whom he lives

- Issue DVPO?: yes
- Subject to 48-hour rule?: no
- Charged under G.S. 14-32.5?: no

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Example 3

A man meets a woman for the first time at a bar, invites her to his house and rapes her.

- Issue DVPO?: no
- Subject to 48-hour rule?: no
- Charged under G.S. 14-32.5?: no

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Example 4

An ex-boyfriend stalks a woman, constantly sending threatening messages and showing up to her home.

- Issue DVPO?: maybe
- Subject to 48-hour rule?: yes
- Charged under G.S. 14-32.5?: not without more

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Example 5

A man trespasses on the property of his ex-wife and her new husband

- Issue DVPO?: not without more
- Subject to 48-hour rule?: yes
- Charged under G.S. 14-32.5?: not without more

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Takeaways

- Domestic violence in different contexts has different consequences
- Eligibility under one statute does not guarantee eligibility under another (i.e., an act against a person can lead to issuance a DVPO but a defendant still not subject to 48-hour rule)
- Pay close attention to the charge/issue at hand when determining whether a relationship qualifies

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