

CRIMINAL DOMESTIC VIOLENCE ISSUES: PRETRIAL RELEASE






Brittany Bromell
June 21, 2023

1

SELF-TEST

2

ROADMAP

-  Pretrial release basics Special procedures
Why does it matter?
-  Applicability in DV cases Offenses
Relationships
-  Timing issues in DV cases Limitation on authority
48-hour rule
-  Considerations
-  Dismissals

3

BASICS OF PRETRIAL RELEASE

4

ORDINARILY...

A defendant charged with a noncapital offense must have conditions of pretrial release determined, in accordance with G.S. 15A-534.

5

CASES WITH SPECIAL PROCEDURES

- Crimes of domestic violence
- Detention of impaired drivers
- Detention for communicable diseases
- Sex offenses and crimes of violence against child victims
- Detention to protect public health
- Manufacture of methamphetamine
- Communicating a threat of mass violence
- Rioting or looting

6

CASES WHERE JUDGE SETS INITIALLY

- Crimes of domestic violence
- Communicating a threat of mass violence
- Rioting or looting

7

WHY DOES THIS MATTER?

- The State has a legitimate interest in providing that a legally trained judge perform individualized determinations of bail and set conditions of release in domestic-violence cases.
- Delay in judicial review of a defendant's pretrial detention may run afoul of his procedural due process rights, resulting in a dismissal.

8

PRETRIAL RELEASE IN DV CASES: APPLICABILITY

9

An ex-girlfriend breaks into a man's home, intending to stab him and his new girlfriend. She is arrested and charged with breaking or entering to terrorize or injure an occupant under G.S. 14-54(a1). The offense is a Class H felony.

Is she subject to the special pretrial release procedures under G.S. 15A-534.1?

10

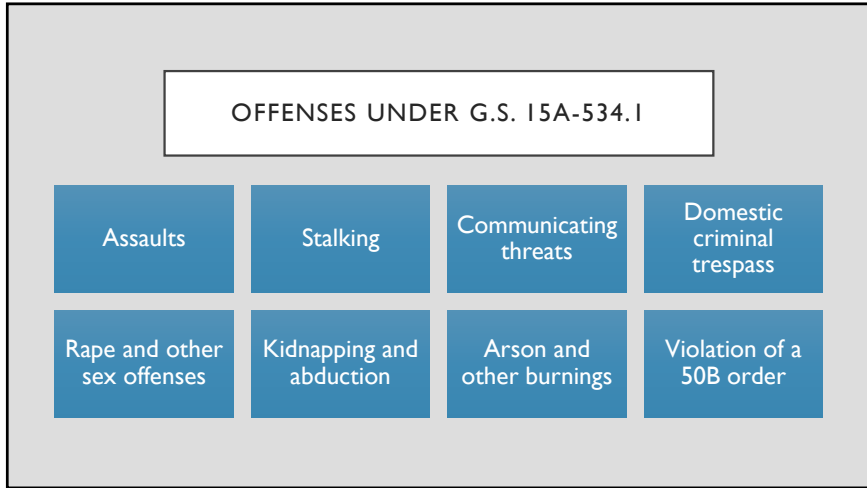
G.S. 15A-534.1

"In all cases in which the defendant is charged with assault on, stalking, communicating a threat to, or committing a felony provided in Articles 7B, 8, 10, or 15 of Chapter 14 of the General Statutes upon 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), 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."

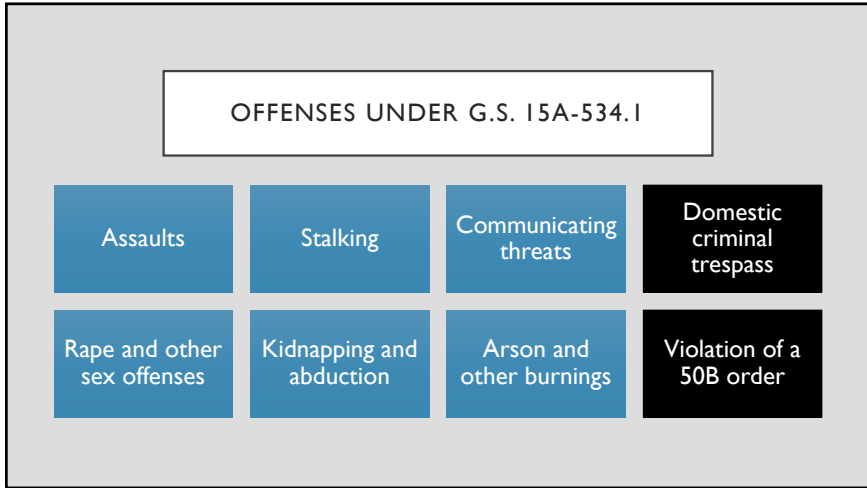
11

OFFENSES

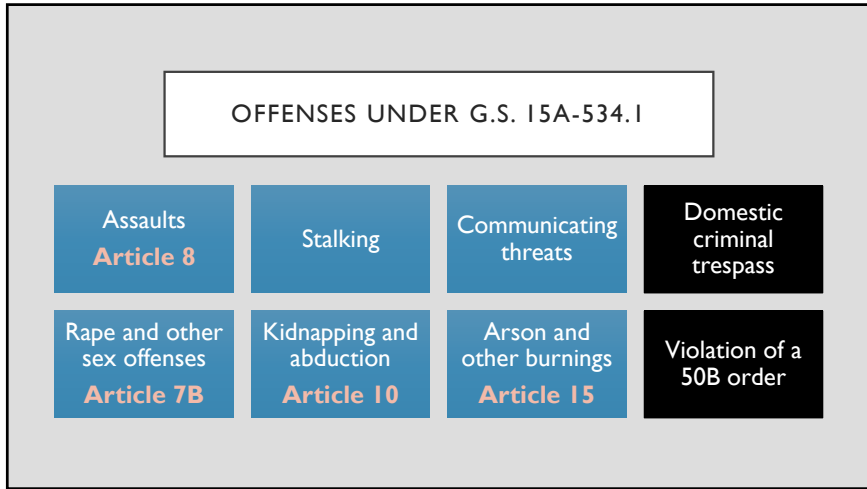
12



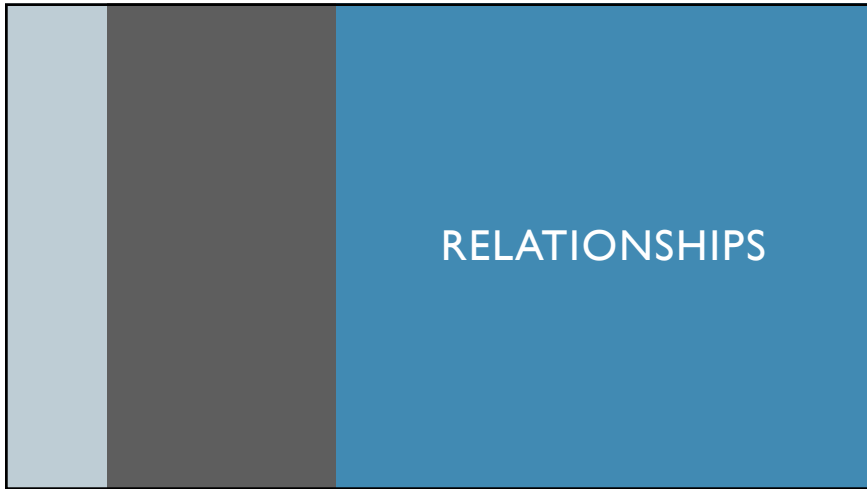
13



14



15



16

RELATIONSHIPS UNDER G.S. 15A-534.1

A spouse or former spouse

A person with whom the defendant lives or has lived as if married

A person with whom the defendant is or has been in a dating relationship

17

TOUGH CALLS

As-if relationships

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

Dating relationships

- How long ago?
- Length of time?

18

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.”

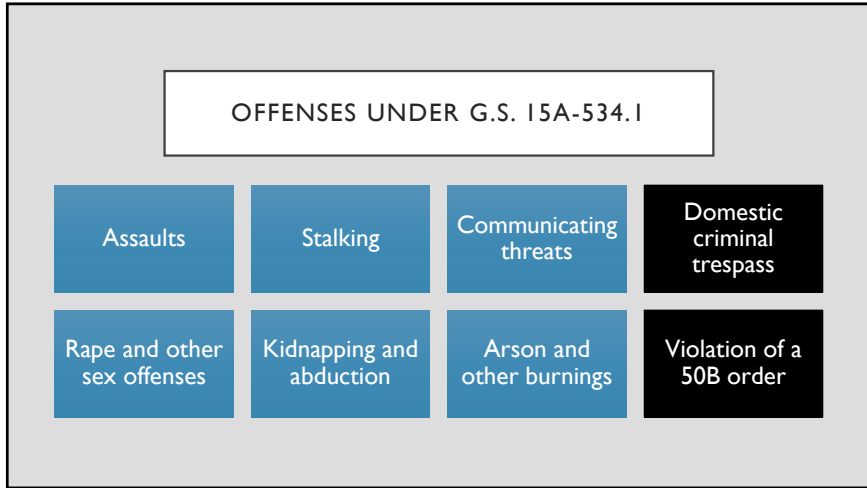
19

DATING RELATIONSHIP: FACTORS TO CONSIDER

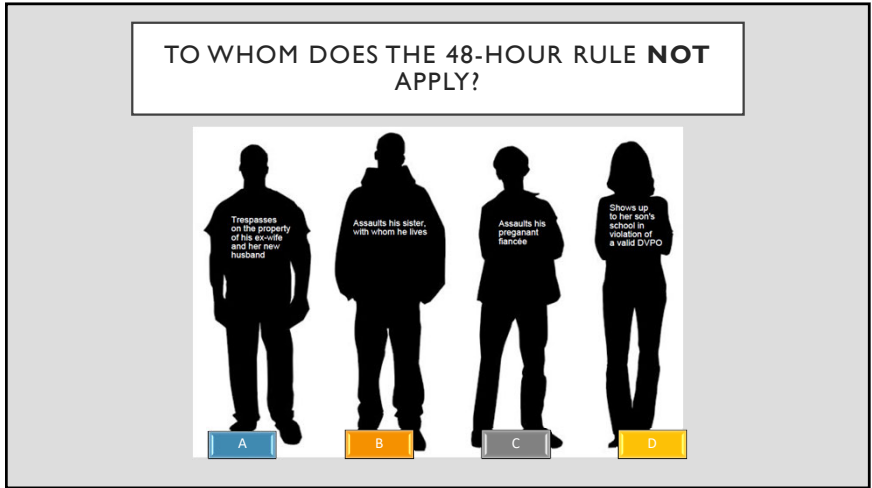
1. Was there a minimal social interpersonal bonding of the parties over and above that of mere casual acquaintances or ordinary fraternization?
2. How long did the alleged dating activities continue prior to the acts of domestic violence alleged?
3. What were the nature and frequency of the parties' 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))

20



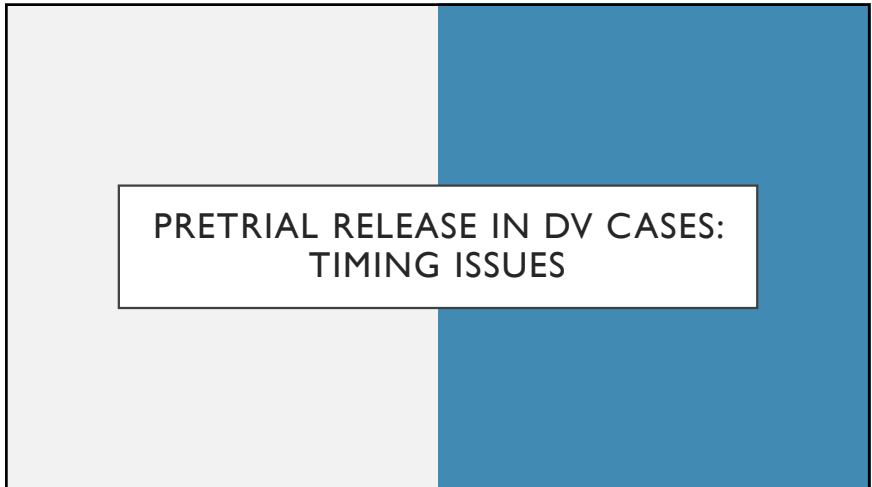
21



22

Scenario	Act	Relationship
A man trespasses on the property of his ex-wife and her new husband	Domestic criminal trespass	Former spouse (although no relationship required)
A man assaults his sister, with whom he lives	Assault	NO QUALIFYING RELATIONSHIP
A man assaults his pregnant fiancée	Assault	Dating relationship
A woman shows up to her son's school in violation of a valid DVPO	Violation of a valid protective order	No relationship required

23



24

LIMITATION ON AUTHORITY

- A defendant may be retained in custody not more than 48 hours from the time of arrest without conditions being set by a judge.
- If a judge has not acted within 48 hours of arrest, the magistrate shall act.
- Statute authorizes holds beyond 48 hours upon certain determinations.

25

APPLYING THE 48-HOUR RULE

- The defendant must be brought before a judge at the earliest, reasonable opportunity.
- A violation of procedural due process occurs where the defendant is held without conditions of pretrial release and a judge was available to set them.

26

EXAMPLE 1

A defendant is arrested on a Saturday at 3:45 pm. Two sessions of District Court convened at or about 9:00 am on Monday. Two sessions of Superior Criminal Court also commenced on the same day around the same time. The defendant is brought before a judge on Monday at 3:45 pm.

Is this a violation of G.S. 15A-534.1?

27

EXAMPLE 2

A defendant is arrested at 6:15 am on Friday. The district court in this county convenes at 9:30 am on Friday mornings. The afternoon sessions are typically devoted to bond hearings. The defendant received a hearing before a judge at approximately 1:30 pm on Friday.

Is this a violation of G.S. 15A-534.1?

28

VENUE

- If a person is arrested in a different county, the appropriate judicial official in the county of arrest must set the pretrial release conditions
- Being held on an out-of-county charge is not a basis for denying or delaying the setting of pretrial release conditions

29

CONDITIONS

30

CONSIDERATIONS

- **REQUIRED** to consider
 - Criminal history
- **DISCRETIONARY** conditions:
 - Stay away from the home, school, business or place of employment of the alleged victim.
 - Refrain from assaulting, beating, molesting, or wounding the alleged victim.
 - Refrain from removing, damaging or injuring specifically identified property.
 - May visit child or children at times and places provided by the terms of any existing order entered by a judge.
 - Abstain from alcohol consumption.

31

VIOLATIONS OF CONDITIONS

- Consequences for violation of pretrial release conditions are consistent regardless of the underlying charges.
- Upon arrest, the defendant must be taken before a magistrate for an initial appearance, at which the magistrate must set new pretrial release conditions.
- Even if the underlying charges were domestic violence offenses, the defendant will not be subject to the 48-hour rule when arrested for a violation of the pretrial release conditions.

32

DISMISSALS

33

STATE V. THOMPSON DISMISSALS

Charges dismissed with prejudice

Thompson cites G.S. 15A-954 as
basis for dismissal

The defendant's rights have been
"flagrantly violated and there is
irreparable prejudice"

34

VOLUNTARY DISMISSALS

If the State takes a voluntary
dismissal on domestic violence
charges and then reinstates the
charges, will the defendant again be
subject to the 48-hour rule?

35

BONUS MATERIAL

36

NEW G.S. 14-32.5 –
MISDEMEANOR CRIME OF DOMESTIC
VIOLENCE

- Effective December 1, 2023
- Class A1 misdemeanor
- Use or attempt to use physical force, or threaten the use of a deadly weapon, against another person...

37

NEW G.S. 14-32.5 –
MISDEMEANOR CRIME OF DOMESTIC
VIOLENCE

The person who commits the offense must have one of the following relationships with the victim:

- 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.

38

Relationships for G.S. 14-32

- Current or former spouse, parent, or guardian
- Child in common
- Cohabitating with or has cohabitated with as a spouse, parent, or guardian
- Similarly situated to a spouse, parent, or guardian
- Current or recent former dating relationship

Relationships for G.S. 15A-534.1

- Spouse or former spouse
- Lives or has lived as if married
- Is or has been in a dating relationship

39

Relationships for G.S. 14-32

- Current or former spouse, parent, or guardian
- Child in common
- Cohabitating with or has cohabitated with as a spouse, parent, or guardian
- Similarly situated to a spouse, parent, or guardian
- Current or recent former dating relationship

Relationships for G.S. 15A-534.1

- Spouse or former spouse
- Lives or has lived as if married
- Is or has been in a dating relationship



40

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)