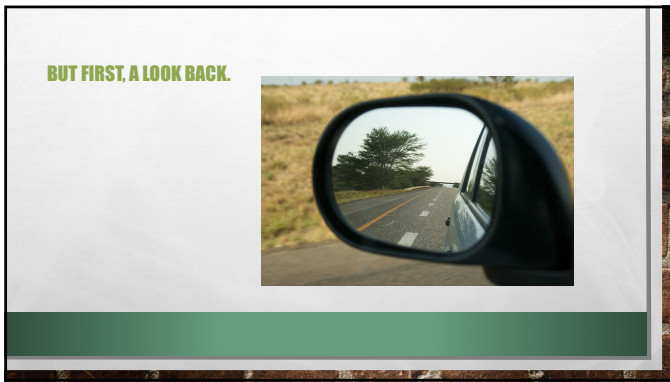
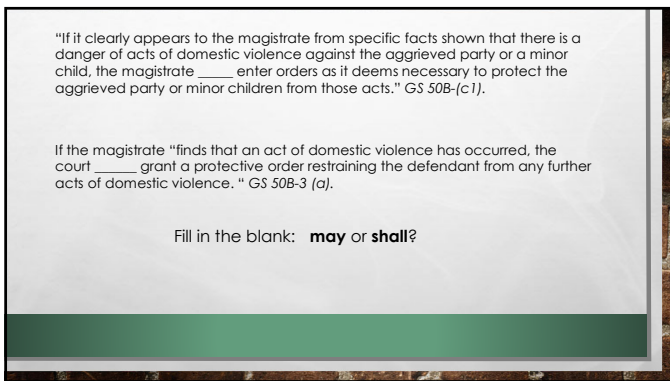




1



2



3

PARAPHRASE


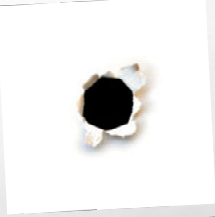
If plaintiff is in danger of DV, judicial officials have the option of ordering measures necessary for protection based on ex parte hearing.

Need for this must clearly appear from specific facts.

If an act of domestic violence has occurred, judicial official is required to grant DVPO forbidding defendant from any further acts of DV and may grant whatever additional measures are necessary to protect the plaintiff.

4


**DVPOS WORK – WHEN
THEY WORK – BECAUSE
THEY ARE ENFORCEABLE
AND ENFORCED.**



5



**WHY ENFORCEMENT
MATTERS: LET ME
TELL YOU A STORY**



Cockerton-Elberbee v. Town of
Jonesville, 176 NC App 372 (2006)

6

PROVISIONS OF DVPO MAY BE ENFORCED IN EITHER OF TWO WAYS

Contempt

Criminal Charges

7

ENFORCEMENT BY CONTEMPT

- Motion by aggrieved party (AOC-CV-307)
- Filed with CSC or – if clerk is not available -- authorized magistrate
- Issue for magistrate: do facts clearly show danger of acts of dv against party or child?
- If so, magistrate must schedule dc hearing at earliest possible date
- Issue & effect service of AOC-CV-308: notice of show cause hearing

8

STATE OF NORTH CAROLINA

County

In The General Court Of Justice
District Court Division

Name Of Plaintiff

VERSUS

Name And Address Of Defendant

ORDER TO APPEAR AND
SHOW CAUSE FOR FAILURE
TO COMPLY WITH
DOMESTIC VIOLENCE
PROTECTIVE ORDER

G.S. 50B-4, 5A-15, -23

To The Defendant Named Above:

I find that there is probable cause to believe that you are in contempt for willfully violating the Domestic Violence Protective Order issued in this case on (give date of order) , as alleged in the attached Motion.

You are ORDERED to appear in person at the date, time and place indicated below to show cause why you should not be held in contempt of court for violating the lawful orders of this Court. If the Court finds you in civil contempt, you may be committed to jail for as long as such civil contempt continues. If the Court finds you in criminal contempt, you may be fined up to \$500, imprisoned for up to thirty (30) days, or both.

Date To Appear

Time To Appear

AM

PM

Date Of Order

Place To Appear

Signature

Assistant CSC

Deputy Clerk Judge

Clerk Of Superior Court

Designated Representative

RETURN OF SERVICE

I certify that this Order was received and served as follows:

Date Served

Name Of Defendant

9

ENFORCEMENT BY CRIMINAL CHARGES: VIOLATION OF DVPO

Essential elements:

- (1) knowing
- (2) violation of
- (3) valid DVPO

10

STATE V. TUCKER, FILED NC COA 8/18/20

Plaintiff obtained ex parte DVPO, which was served on defendant in jail, along with summons and notice of hearing. Defendant did not appear for trial on "permanent" order, and copy of DVPO was mailed to last known address: the jail. Thus, defendant was not served with final order. Defendant was apparently homeless.

On the morning of 7 September 2017, defendant broke into plaintiff's home, extracted her from the closet where she was hiding, and threatened her with a knife. At this point, police officers entered the apartment and heard defendant exclaim "I'm going to kill you." As officers separated defendant from plaintiff, Officer McCarty heard plaintiff say, "That's why I got a court order," and defendant replied, "I know, I know."

Vote: Was this violation knowing?

11

VALID DVPO?

- Ex parte? Yes
- Expired? No
- Issued by any state or tribal court
- No requirement that order be registered to be valid
- Protected party cannot give defendant permission to violate a DVPO

12

WARRANTLESS ARREST

Mandatory if violation involves

- Entry of victim's home
- Threatening, harassing, or interfering

This is so even if

- Offense committed outside LEO presence, or
- Defendant has left the premises

Warrantless arrest discretionary for any other violation of DVPO

13

MANDATORY ARREST

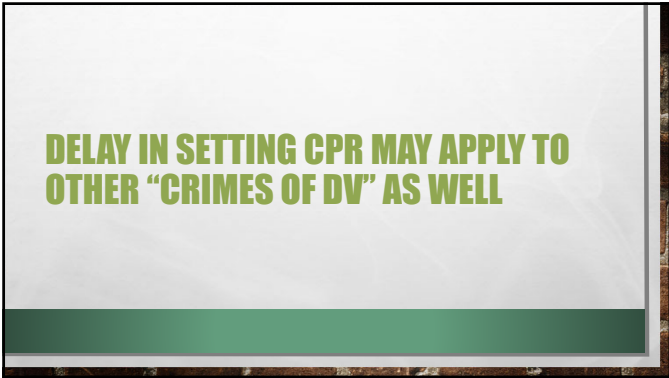
- Cockerham-Ellerbee v. Town of Jonesville, 176 NC App 372 (2006)
- SL 2009-389: An act to clarify DV laws . . . despite the 2006 holding by the NC COA in Cockerham-Ellerbee
- While the COA interpreted the statutory requirement of immediate arrest to be discretionary, "the intent of the NC General Assembly in enacting GS 50B-4.1(b) was to create a mandatory provision."

14

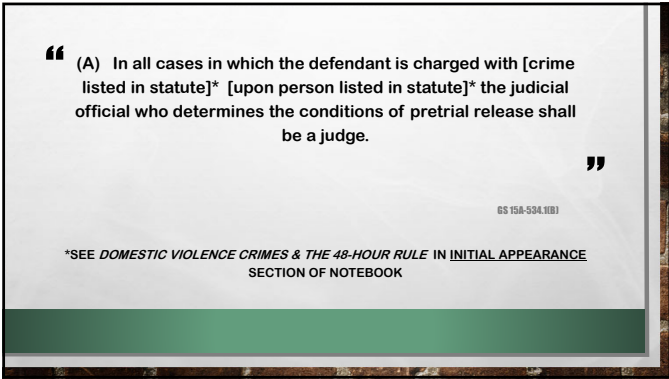
MAGISTRATE'S DUTY FOR DVPO VIOLATION

- (1) Warrantless arrest? Determine PC, issue magistrate's order if appropriate
- (2) Conduct initial appearance
- (3) Do not set conditions of pretrial release
- (4) Deal with additional criminal charges, if any

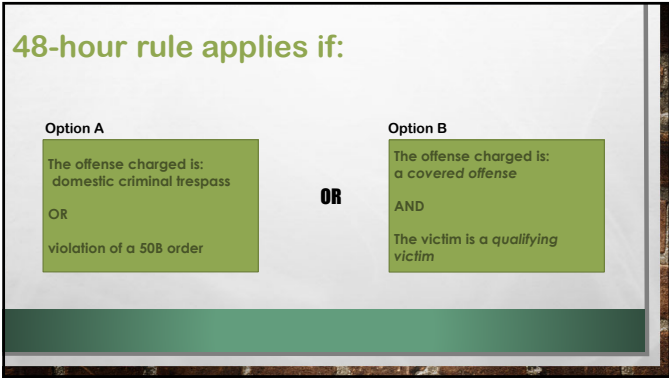
15



16



17



18

DATING RELATIONSHIPS

GS 50B - 1

DVPO authorized for persons **of the opposite sex** who are in a dating relationship . . .

A dating relationship is one wherein the parties are

- Romantically involved
- Over time
- And on a continuous basis.

. . .

48-HOUR RULE

Conditions set by judge if charge is one of the listed crimes and the victim is "a person with whom the defendant is or has been in a dating relationship as defined in G.S. 50b-1(b)(6)"

Note: No requirement that persons be "of the opposite sex."

19

DATING RELATIONSHIPS? 6 FACTORS

- 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, NC COA (7/7/2015)

20

MYTH: THE PURPOSE OF THE 48-HOUR RULE IS TO PROVIDE A COOLING-OFF PERIOD.

21

State v. Thompson, NCA (1998)

- 10/21/95 warrant issued for misdemeanor assault inflicting serious injury
- 10/28 (Saturday): D arrested & taken before magistrate at 3:45 PM. Magistrate entered order of commitment that D be brought "before judge or magistrate 10/30/95 3:45 PM"
- 10/30/9:00 AM: 2 district courts in session
- 10/30/~ 3:45: bond hearing before DCJ results in D's prompt release

22

State v. Thompson

"The failure to provide defendant with a bond hearing before a judge at the first opportunity on Monday morning, and the continued detention of defendant well into the afternoon was unnecessary, unreasonable, and thus constitutionally impermissible."

23

THE MAXIMUM 48-HOUR RULE

We want conditions set by a judge, but 48+ hours of pretrial detention w/o bond hearing is just too much.

24

“ If a judge has not acted pursuant to this section within 48 hours of arrest, the magistrate shall act under the provisions of this section. ”

GS 15A-594.1(b)

25

PRACTICE

| Crime | Relationship |
|------------------------------------------------------------|-----------------------------------------------------------------|
| <ul style="list-style-type: none">• STALKING | <ul style="list-style-type: none">• FORMER SPOUSE |

26

PRACTICE

| Crime | Relationship |
|------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------|
| <ul style="list-style-type: none">• STALKING• FELONIOUS RESTRAINT | <ul style="list-style-type: none">• FORMER SPOUSE• CURRENT LIVE-IN/SAME SEX |

27

PRACTICE

Crime

- STALKING
- FELONIOUS RESTRAINT
- DVPO VIOLATION

Relationship

- FORMER SPOUSE
- CURRENT LIVE-IN/SAME SEX
- CHILD IN COMMON

28

PRACTICE

Crime

- STALKING
- FELONIOUS RESTRAINT
- DVPO VIOLATION
- CYBERSTALKING

Relationship

- FORMER SPOUSE
- CURRENT LIVE-IN/SAME SEX
- CHILD IN COMMON
- SAME SEX DATING RELATIONSHIP

29

SETTING CONDITIONS

- CONSIDER CRIMINAL HISTORY
- AOC-CR-630

30

STATE OF NORTH CAROLINA

County In The General Court Of Justice
☐ District ☐ Superior Court Division

STATE VERSUS

Name Of Defendant

CONDITIONS OF RELEASE FOR PERSON CHARGED WITH A CRIME OF DOMESTIC VIOLENCE

G.S. 15A-534.1

NOTE: Use this form in conjunction with form AOC-CR-200, Conditions Of Release And Release Order.

FINDINGS

The undersigned judicial official finds that the defendant named above is charged with assault on, stalking, communicating a threat to, or committing a felony provided in former Article 7A or Articles 7B, 8, 1B, 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 the offenses committed on or after December 1, 2015, only a person with whom the defendant is or has been in a dating relationship as defined in G.S. 52B-1(b)(1), with domestic criminal trespass, or with violation of an order entered pursuant to Chapter 50B, Domestic Violence, of the General Statutes.

The undersigned judicial official ☐ has considered the defendant's criminal history as shown on a criminal history report provided by a law enforcement officer or a district attorney. ☐ has not considered the defendant's criminal history as shown on a criminal history report because no report could be obtained within a reasonable time.

ORDER

Based upon the foregoing findings, the undersigned judicial official ORDERS the following conditions of release IN ADDITION TO the conditions of release set out on the attached form AOC-CR-200.

☐ 1. The defendant shall stay away from the home, school, business, or place of employment of the alleged victim.

31

Based upon the foregoing findings, the undersigned judicial official ORDERS the following conditions of release IN ADDITION TO the conditions of release set out on the attached form AOC-CR-200.

☐ 1. The defendant shall stay away from the home, school, business or place of employment of the alleged victim.

☐ 2. The defendant shall refrain from assaulting, beating, molesting, or wounding the alleged victim.

☐ 3. The defendant shall refrain from removing, damaging or injuring the property listed below:

☐ 4. The defendant may visit his or her child or children at times and places provided by the terms of any existing order entered by a judge.

☐ 5. If the offense committed on or after December 1, 2012, The defendant shall abstain from alcohol, as verified by a continuous alcohol monitoring system. The monitoring provider shall report any violation of this condition to the district attorney.

☐ 6. Other restrictions:

☐ a. The defendant shall have no contact with the alleged victim.

☐ b. The defendant shall comply with any valid domestic violence protective order in effect.

☐ c. The defendant shall not possess any firearms.

☐ d. Other:

Date Signature Of Judicial Official

☐ Magistrate
☐ District Court Judge
☐ Superior Court Judge

32

“ Upon a determination by the judge that the immediate release of the defendant will pose a danger of injury to the alleged victim or to any other person or is likely to result in intimidation of the alleged victim and upon a determination that the execution of an appearance bond as required by G.S. 15A-534 will not reasonably assure that such injury or intimidation will not occur, a judge may retain the defendant in custody for a reasonable period of time while determining the conditions of pretrial release. ”

G.S. 15A-534.1A(1)(1)

FOR EXTRAORDINARY CIRCUMSTANCES

33

What if D violates a condition?

- LEO can make warrantless arrest
- No arrest? Magistrate may issue order for arrest & set new conditions **if** first appearance hasn't happened yet.
- Consult with CDJ about procedure post-first appearance
- 48-rule N/A
