

## The Blow

*by: Kimberly Overton, Chief Resource Prosecutor*

The Traffic Safety Resource Prosecutor program has undergone several changes in the past few months. Although I certainly hope that you have not experienced any loss in technical assistance or other services during that time, I am excited to announce that the changes have brought an invaluable tool to the Conference of District Attorney and to you.

Drum Role Please . . .

Ike Avery - YES, "THE IKE AVERY" - is now the newest member of the Conference staff and will be serving you as your Traffic Safety Resource Prosecutor. As many of you know, Ike is in retirement from the Attorney General's Office so he will be working part-time. Additionally, we have restructured the TSRP program to better serve your needs in the area of highway safety. Beginning September 1, 2008, with Ike serving as the TSRP, 4 ADAs have been chosen to serve as point people throughout the state on Vehicular Homicide, DWI and other highway safety issues. These ADAs will assist the Conference with training and provide technical assistance as needed in their region and on the Traffic Law Forum. Please feel free to contact these individuals and utilize the forum as needed.

Conference of District Attorneys - Ike Avery - TSRP - isaac.t.avery@nccourts.org  
Prosecutorial District 1 - Kim Pellini - ADA - kimberly.d.pellini@nccourts.org  
Prosecutorial District 13 - Sarah Garner - ADA - sarah.z.garner@nccourts.org  
Prosecutorial District 17A - Melanie Bridge - ADA - melanie.bridge@nccourts.org  
Prosecutorial District 28 - Chris Hess - ADA - christopher.s.hess@nccourts.org

## Constitutionality of 0.08 means 0.08

*State v. Narron - Oct. 7, 2008*

*by: Ike Avery, TSRP*

On October 15 2007, the defendant was in the driver's seat of a motor vehicle that was stopped "in the middle of the travel lane" on the left side of a downtown street. Defendant's eyes were red and glassy and that he had an odor of alcohol. His alcohol concentration was 0.08. The Defendant pled guilty in district court on the first setting of the case and appealed to superior court in order to be the first to raise the constitutional issue. Defendant's pretrial motion to dismiss was denied, he was convicted and on appeal argued that "[t]he results of a chemical analysis shall be deemed sufficient evidence to prove a person's alcohol concentration" in N.C. Gen. Stat. § 20-138.1(a)(2) "constitutes a mandatory presumption violative of his right to due process secured by the Fifth and Fourteenth Amendments to the U.S. Constitution." The Court of Appeals disagreed. The Court held that this language creates "prima facie" evidence of the defendant's alcohol concentration. "The 'result of a chemical analysis' is a report of a person's alcohol concentration, and the statute provides that the result of such a test constitutes prima facie evidence of the defendant's alcohol concentration as reported in the results. In other words, the statute simply authorizes the jury to find that the report is what it purports to be - the results of a chemical analysis showing the defendant's alcohol concentration." If the test result is admitted, the State has met its burden. The Court did say: "In addition to technical challenges set out in the statutes, a defendant presumably could impeach the admissibility, credibility, or weight of the results of chemical analysis in traditional ways." The State had argued that the Court should say that rebuttal of the test result can only be made by a showing that the instrument was not operating properly or results of another test and not through merely claiming that the lack of signs of impairment of the defendant. The Court did not go this far but a close reading of the opinion shows that the Court requires some evidence that the "result" was not an accurate test result. The Court upheld the constitutionality of one of the most significant provisions of the 2006 amendments to the DWI law.

## You may plead the 5<sup>th</sup>, but your car may not

*Sgt. Joseph Sadler, North Carolina Highway Patrol Reconstruction Unit*

Beginning in 1994 General Motors began equipping some of their vehicles with Event Data Recorders (EDR). Some of these data recorders were capable of recording braking, engine speed, throttle percentage and miles per hour at the time algorithm is enabled. The technical term "algorithm enabled" is the time at which the EDR begins saving the data.

Since this time, other car manufacturers such as Ford, Saab, Chrysler, Isuzu, Mitsubishi Sterling, and Suzuki have begun installing EDR's on their vehicles. In some instances, the owner's manuals may include information concerning the EDR. Toyota has also equipped most of their vehicles with EDR's, but have yet to release the software or hardware for them to be downloaded.

The data contained in these event data recorders can help provide a better understanding of how a crash occurred. During an airbag deployment event, or near deployment, data is collected and stored in the EDR that can be downloaded and interpreted to develop a complete picture of the crash sequence. It is important to note, that no personal data such as name, gender, age or crash location is collected.

To read the data recorded by an EDR, special hardware and software is required. It is also important to note that an EDR download should never be used alone to try and prove certain aspects of a crash. This data should always be ...

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used in conjunction with a complete collision investigation or reconstruction of all the physical evidence pertaining to the crash.

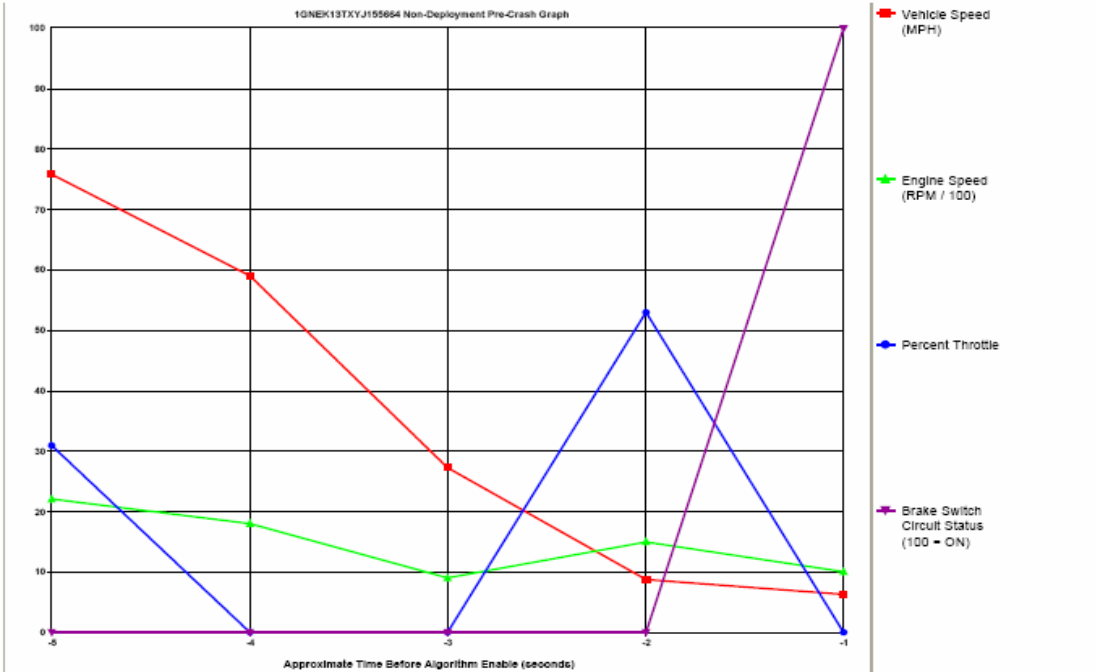
One issue that has come to the forefront, is who owns the data that is contained in the EDR. Most courts in other states have overwhelmingly ruled that the owner of the vehicle is the owner of any data contained in the EDR. However, what if the owner is not operating the vehicle at the time the data is recorded.

That is why it is important for the law enforcement agency that is investigating the collision to obtain a search warrant before attempting to download any of the data from the EDR. Once a search warrant is obtained the data that is contained in the EDR can be imaged, leaving the original data still contained on the EDR.

Below is an actual GM download from an EDR. As you can see from the graph, it recorded 5 seconds of pre crash data from the time the algorithm was enabled. This simply means an event took place that woke up the EDR and it began recording data.

**System Status At Non-Deployment**

SIR Warning Lamp Status	OFF
Driver's Belt Switch Circuit Status	BUCKLED
Passenger Front Air Bag Suppression Switch Circuit Status	Air Bag Not Suppressed
Ignition Cycles At Non-Deployment	17508
Maximum SDM Algorithm Forward Velocity Change (MPH)	0.00



Seconds Before AE	Vehicle Speed (MPH)	Engine Speed (RPM)	Percent Throttle	Brake Switch Circuit Status
-5	76	2176	31	OFF
-4	59	1792	0	OFF
-3	27	896	0	OFF
-2	9	1472	53	OFF
-1	6	960	0	ON

**About the Author**

Joseph L. Sadler joined the North Carolina State Highway Patrol in October 1987 and graduated from Basic Patrol School in March of 1988. Before joining the Patrol, Sgt. Sadler was a member of the Jacksonville Police Department in Jacksonville N.C. While serving with the JPD he was assigned to a federally funded DWI task force and hit and run investigation unit. He worked with JPD for approximately 5 years.

Sgt. Sadler was trained in collision reconstruction in 1995 by the Institute of Police Technology and Management (IPTM) from the University of North Florida. He is also a General Instructor by the Criminal Justice Education, Training and Standards Commission. He has conducted collision investigation training for the Highway Patrol's Basic Schools since 1999 and has trained over 400 State Troopers and an additional 50 supervisors in First Line Supervision. He has also trained several other law enforcement agencies in advanced collision investigation through Wake Technical Community College.

Sgt. Sadler holds an Associate degree in Criminal Justice from Coastal Carolina Community College and successfully completed the Administrative Officers Management Program (AOMP) from North Carolina State University.

Joe Sadler currently holds the rank of Sergeant and is the First Line Supervisor for the NCSHP Raleigh Reconstruction Unit.

**Hall of Fame**

- Assistant District Attorney Dale Morrill qualified Brian Smith as an expert in Retrograde Extrapolation in Durham County District Court . The Honorable Judge Hill presided over the case which resulted in a guilty verdict.
- Matt Craven, an Assistant District Attorney in Wake County, has paired up with Paul Glover, Branch Head for FTA and they are working hard. On 8/22 and 9/12 Paul was qualified as an expert in Blood Alcohol Physiology, Pharmacology and related research. Both cases resulted in a guilty verdict. Judge Desvougues and Judge Brewer presided.
- A big Kudos and thanks goes out to Trooper Barry Earles in Rockingham County. He was qualified as an expert in Drug Recognition (for the first time).
- Kudos to ADA Mike Beam, who successfully qualified Deputy Charles Galloway as an expert witness in the fields of: DWI Investigation, Drug Recognition, and Drug Impaired Driving before Judge Dale Stubbs in the District Court of Lee County on September 5, 2008.

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