



## Motions and Briefs in DWI Court or How to Win Before the Trial Starts

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In 2006 DWI prosecutors were handed a gift: the end of trial by ambush. N.C.G.S. §20-38.6 is our own private interlocutory appeal. The statute mandates that the defendant may ONLY move to dismiss or suppress evidence (the stop, the blow, the blood, etc) pretrial. There are two exceptions: he may move to dismiss at the close of the State's proof or all proof for insufficient evidence and he may move to suppress during trial if there are "facts not previously known."

In order to follow the statute and the judicial opinions properly, you must do the following:

1. Do not arraign the defendant. No one is entering pleas yet: this is a pretrial motion.
2. If you appeal an adverse ruling, do not wait until the judge issues a written ruling.
3. When you appeal to Superior Court, it must be in writing. The 10 day time frame in N.C.G.S. §15A-1432(b) does not apply. State v. Palmer, 197 NC App. 201 (2009). However, the best policy is ASAP.
4. Your notice of appeal should be properly captioned and state you are appealing a preliminary order from the specific date, court, and judge. You should include as detailed a factual basis as possible. Cite N.C.G.S. §§20-38.6 and 20-38.7 in your notice. Technical violations that do not prejudice the defendant do not allow for dismissal of appeal. State v. Hinchman, 192 NC App. 657 (2008)
5. If you lose in Superior Court, the only mechanism to get the case to the Appellate Division in on a writ of certiorari. State v. Fowler, 197 NC App. 1 (2009).

How do you ensure compliance with the statute and protect your case? In order to guard against the "newly discovered evidence" loophole, make sure the defendant knows what your proof is. There is no right to discovery in District Court. However, if the evidence against the defendant is a closely guarded secret, he will be able to fall back on this exception. Your case is stronger if you know well in advance what the weaknesses are. We cannot accuse them of trial by ambush if we are guilty as well. The best policy: show what you have in advance. Have your officer provide the DWIR report. Make sure they have a copy of the blow or blood. Provide witness statements. We are protectors of the truth, so tell it.

It does not stop there. We all experience the same defenses repeatedly. Unfortunately, in District Court we do not have the luxury of running to do research. (Although please note that N.C.G.S. §20-38.6(b) does grant you "reasonable time" to gather witnesses, evidence, and do research to defend a pretrial motion to suppress/dismiss.) Since you are already aware of the standard defenses, prepare in advance. Many issues are not fact specific. Therefore, briefs are the best weapons to combat these defenses. Are your judges requiring you to prove specifics as to what the impairing substance is? We have a brief for that. Are you suffering dismissals because you do not have the author of your checkpoint plan in court to testify? We have a brief for that as well. Narron and Simmons? We have that too. Big gulp defense? Paperwork glitches? These can all be anticipated and resolved in advance. Briefs and case law intimidate defense attorneys. They make sure the same laws are followed in every county. They inform and assist our judges. They teach us the law and save time and bad rulings.

Much of this work has already been done. What is your responsibility? Let us know the issues you face regularly. We will work with you to resolve these defenses before they become a problem.

### Useful Cases I Stumbled Across

We are going to start a new section titled "Useful Cases I Stumbled Across." I would appreciate any input you can give. Often I will read a case for one purpose but find great language to use in the future. When you find good cases that help us in traffic matters, please send them in.

State v. Morgan, 189 NC App. 716 (2008): This case involves an attempt at an interlocutory appeal from a District Court ruling on a DWI before the statute allowing so was enacted. The State lost (but put up a good fight). However, it is worth reading because of the issue that resulted in the dismissal in District Court. The officer's affidavit was ruled inadmissible and the evidence suppressed because the document was notarized, and the notary had not included the expiration date for her commission. Although the Court of Appeals was mainly concerned with procedure, they do, as a side note, state that the District Court's ruling was "erroneous" because there was additional evidence to prove the expiration of the commission.

State v. Herren, 173 NC 801 (1917) and State v. Mitchner, 256 NC 620 (1962): Yes, we can rely on bigamy and abortion cases to prove identity on an old traffic ticket. These cases both say "identity of names, nothing else appearing, furnishes evidence of the identity of a person. Identity of name is prima facie evidence of identity of person, and is sufficient proof of the fact, in the absence of all evidence to the contrary." These are especially useful in prosecuting violation of 20-28(a2), driving after FTA, where identity is often the only issue.

State v. Scruggs, 706 S.E.2d 836, 2011 N.C. App. LEXIS 333 (3-1-11) and State v. Harris, 43 N.C. App. 346, 349, appeal dismissed, 298 N.C. 808 (1979): An out-of-jurisdiction arrest following a constitutional stop in violation of § 15A-402, does not rise to the level of a substantial violation of Chapter 15A -974 and suppressing evidence is not allowed.

## Useful Cases I Stumbled Across (cont.)

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State v Hensley, 2010 N.C. App. LEXIS 1966 (Unpublished 10-19-10): There was sufficient circumstantial evidence of driving the moped. The State's evidence tended to establish that Trooper Reynolds arrived at the scene approximately 12 minutes after receiving a dispatch notifying him that an accident had occurred and saw that defendant was present and injured. Other emergency personnel were at the scene before Trooper Reynolds arrived; however, no one saw another individual who may have been driving the moped.

State v Hensley, 2010 N.C. App. LEXIS 1966 (Unpublished 10-19-10): There was sufficient evidence of reckless driving. The State's evidence that defendant was intoxicated while driving the moped, which resulted in an accident, was sufficient to establish that defendant drove in a manner so as to endanger or be likely to endanger any person or property.

## Costs of Death From Motor Vehicle Crashes

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The Centers for Disease Control have issued their latest report on the overall numbers due to medical and work loss costs\* from motor vehicle collisions. North Carolina came in Number Six, boasting an unfortunate \$1.5 billion for the year surveyed (2005). Broken down by age group, young adults (ages 20 to 34) account for 43% of these dollars.

The numbers are staggering, but the CDC offers some solutions based on research and hard evidence of effectiveness. The first preventative measure is seat belt use for everyone in the car. There is no question that seat belts and child restraint devices save lives. Because of this, enforcement and prosecution of seat belt violations is crucial. The second recommendation is graduated drivers licensing. North Carolina has a form of this, with limited and full provisional licensing of teenagers. Motorcycle helmet enforcement is also key: this is motorcycle season, and law enforcement officers need to be diligent in ensuring motorcyclists are using the proper safety equipment. The final strategy to reduce deaths is impaired driving enforcement. Checkpoints are proven in their effectiveness for taking impaired drivers off the road. Ignition interlocks reduce recidivism in those convicted of impaired driving with a BAC of .15 or more. Therefore, a numerical score is mandatory in triggering this penalty. The best method: no refusals. If a person is impaired on alcohol and refuses the intoximeter, an important condition of probation is lost without the numerical score a blood test would yield.

What do officers need to do? Enforce the seat belt, child restraint, and helmet laws. Make sure our teen drivers are within the restrictions of their provisional licenses. Conduct checkpoints and adopt a no refusal policy. What do prosecutors need to do? Adopt a "no dismissal" policy for seat belts and helmets. Train officers on proper checkpoint procedures and encourage no refusals. North Carolina is #10 in population. We need to be #50 in costs of deaths.

*\*Work loss costs are the total estimated lifetime earnings of an average person, similarly situated, had they not been killed in a crash.*

## DWI Regional:CENTRAL

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Join us July 28-29 for DWI Regional cross-training presented by the Conference of District Attorneys and the Governor's Highway Safety Program. This two-day course will provide joint training to prosecutors, magistrates and law enforcement in various areas of DWI prosecution. With a faculty comprised of prosecutors, magistrates, judges and law enforcement, this training promises to not only teach you the basics, but also expand your knowledge and equip you to meet and beat the defense attorneys' tactics. The curriculum for this course will contain the following topics: Drug Impaired Driving and the DRE Program, Crash Cases Including Reconstructions, How to: Effectively Present Your Case, Checkpoints, and a Legal and Statutory Update. For more information, please visit [www.ncdistrictattorney.org](http://www.ncdistrictattorney.org).

## Wall of Fame

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On January 19, 2011 ADA Kristin Peebles and Officer Travis Lincoln of the Louisburg Police Department teamed up before The Honorable Carolyn Yancey in Franklin County District Court to convict a driver of DWI despite refusing a blood test, suppression of medical records, and very few admissions on the part of the driver. Officer Lincoln's clear testimony, and ADA Peebles' excellent questioning, led to a guilty verdict.

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