



Forced Blood Draws Without a Search Warrant

by: Ike Avery, TSRP

On January 19, 2010, the Court of Appeals in *State v Fletcher* held that a forced blood draw from a defendant who had refused the Intoximeter was constitutional even though the officer did not obtain a search warrant. In this case the defendant was stopped at a checkpoint. He was arrested and offered the Intoximeter test but after six unsuccessful attempts to provide a breath sample, he was written up as a refusal. Following a drive of two to three minutes and no more than a five-minute wait at the hospital, defendant's blood was drawn. The results of that test showed an alcohol concentration of 0.10. The defendant made a motion to suppress the blood test and when that was denied pled guilty to habitual DWI, reserving his right to appeal.

Seizing vehicles and drivers licenses-

Have questions about seizing vehicles or pretrial drivers license revocation? The School of Government has a free publication. *Magistrate Procedures for Ordering Civil License Revocations and the Seizure and Impoundment of Motor Vehicles* focuses on magistrate procedures for ordering civil license revocations and the seizure and impoundment of motor vehicles but has a good discussion of the law. The bulletin is available at no charge, in PDF format, at: www.sog.unc.edu/bulletins/aoj

On appeal, the defendant contended that the blood draw was unconstitutional because the officer failed to obtain a search warrant. G.S. 20-139.1(d1) allows an officer to obtain a blood sample without a court order "if the officer reasonably believes that the delay necessary to obtain a court order, under the circumstances, would result in the dissipation of the percentage of alcohol in the person's blood or urine." The trial court found that the delay would result in dissipation based upon the testimony of the charging officer:

Officer Powers testified that the magistrate's office in Carthage was twelve miles away. She also testified that she had been to the magistrate's office on approximately twenty to thirty occasions late on Saturday night or early Sunday morning. She testified that the weekends are often "very busy" at the magistrate's office and that, of the twenty to thirty weekend nights she had traveled there, she had had to stand in line "[s]everal of those times." Officer Powers further testified that she frequently had been to the emergency room at the hospital on weekend nights and that "most of the time" it was busy then. Based upon her four years' experience as a police officer, Officer Powers opined that the entire process of driving to the magistrate's office, standing in line, filling out the required forms, returning to the hospital, and having defendant's blood drawn would have taken "anywhere from two to three hours[.]"

The Court said that this evidence is sufficient to uphold the findings of the superior court and comply with the statutory language. Note that the issue was not the actual time it took to obtain the blood sample, but the time the officer reasonably believed it would take to obtain the warrant and the blood sample. The officer is not required to be correct, only

to have a reasonable belief it will take two to three hours even though the delay caused by driving to and waiting at the hospital was only seven to eight minutes.

The Defendant then made a general attack on the constitutionality of the G.S. 20-139.1(d1). The defendant argued that since retrograde extrapolation testimony is admissible, so there is no exigent circumstances based upon alcohol dissipation. The State can prove the actual alcohol concentration with expert testimony so evidence is not lost. Dissipation of alcohol can no longer be justification for not obtaining a search warrant. The Court of Appeal rejected this argument.

The Court of Appeals did NOT say that all forced blood draws without a court order are constitutional. The Court of Appeals said that an officer's reasonable belief that the delay will be two to three hours in obtaining the search warrant and the blood sample, is a sufficient justification to proceed without a search warrant. Officers must be prepared to testify about the expected delay in order to avoid the warrant requirement. If the magistrate is available, close by and the warrant can be obtained quickly, a search warrant should be obtained. Also, if officers want to avoid this issue obtaining a search warrant even if it takes some additional time will foreclose this argument. If a search warrant is not obtained, an officer should make notes at the time about why the officer believed a delay was likely and how much of a delay the officer thought was likely.

To Reconstruct or Not

by: Sgt Billy Overton, NCSHP Reconstruction Unit

Prosecutors have the routine task of handling infractions and criminal charges resulting from motor vehicle collisions. Cases with property damage or minor injury are regularly dismissed when an insurance letter of responsibility is produced. Crash cases involving careless and reckless driving, high speeds, no liability insurance, driving without a license or with a revoked license, and driving while impaired will usually involve a plea arraignment or a trial. However, some collisions result in serious injury and death, which coupled with impairment, past history, and/or intent should elevate the misdemeanor charges to more appropriate felony charges. As a prosecutor, what are your options? You may go to court with the investigating officer who may or may not have a field sketch, a few witness statements, and a standard crash report. Alternatively, you can request an in-depth investigation and analysis of the crash from trained specialists who have the time and resources to give you the facts you need to prosecute the defendant successfully.

The reconstruction of a crash in simple terms is locating physical evidence, documenting information obtained; conducting an analysis of the facts and establishing what happened based on what was found. Like pieces to a puzzle, collision events must be identified and placed back together in order to get a clear picture of how the crash unfolded. Details of the crash can come from driver/witness interviews, roadway evidence, and vehicle examinations. However, some portions of the collision events are unknowns that will remain unknown for a variety of reasons. This does not mean a reconstruction cannot be completed. It will just have some missing sections that could be filled in with reasonable deduction, and [continued on next page]

many times, it will still give you an overall picture of the occurrence. Obviously, a collision reconstruction consumes a lot of time and involves many resources. Therefore, requests for service should be scrutinized for the complexity of the unresolved issues and/or the severity of the pending criminal charges. Once you reach the decision that you need the assistance of a reconstruction team, what will you be asking for? Just saying you want a reconstruction done is a vague request for a Reconstructionist. Be prepared to explain the circumstances surrounding the case, obstacles to the prosecution of the case and the questions about the case for which you are seeking answers. What information are you seeking and why, and how will it help your case? What about speed? Everyone wants to know how fast the vehicle was going. If speed is not a real factor in the crash, my advice is to leave it alone. The factors involved in using speed equations can be very subjective to opinions, interpretations, and conclusions, thus, making it a subject open to attack by the defense and their "hired guns," which can divert attention from the real causes of the crash. Remember, they only need "reasonable" doubt, which could mean they only need to confuse the jury. Communication between the prosecutor and the Reconstructionist is vital. Contact should be made on a regular basis to keep everyone abreast of developments so proper adjustments can be made to prosecution strategies. Look at it this way, the Reconstructionist acts as an investigative branch of the District Attorney's office so the two-way flow of information is critical.

Sergeant B. W. Overton has been employed with the North Carolina State Highway Patrol for 24 Years and has been assigned to the Collision Reconstruction Unit for 3 years. He is currently the supervisor of the Greenville Reconstruction Team and has been involved in 28 collision reconstructions. Sergeant Overton has also investigated over 2500 non-reconstructed collisions. His duty stations include Swan Quarter, Clinton, Goldsboro, Lumberton, & Greenville.

The North Carolina State Highway Patrol has a collision reconstruction unit that is divided into five (5) teams across the state. The team locations are Greenville, Fayetteville, Raleigh, Winston-Salem, and Conover. Each team is responsible for a designated geographical area, but performs work in all regions of the state. The unit supervisor, First Sergeant Ardeen Hunt, Jr., is located at Special Operations Section Headquarters in Cary. Prosecutor requests and inquiries may be sent to him directly via telephone at 919.319.1540 or by email at ahunt@ncshp.org. Additionally, many municipal agencies have reconstruction units, crash teams, and/or certified Reconstructionists who can perform the same services that the Highway Patrol provides. All collisions have their own unique set of circumstances that affect how long it will take to complete a reconstruction. Simple cases can be completed in as little as four (4) weeks and complicated cases can take more than six (6) months due to lab testing and analysis of evidence. Regardless, the North Carolina State Highway Patrol Collision Reconstruction Unit will work diligently to complete a comprehensive investigation that results in a report you can use to secure a conviction against a guilty defendant.

HALL OF FAME

On September 9, 2009, ADA Meredith Bishop qualified Trooper Eric Strader as an expert in Horizontal Gaze Nystagmus (HGN) in front of District Court Judge Tom Lambeth (Alamance County).

ADA Lindsey McKee qualified Trooper Benjamin Brewington as an expert in HGN before District Court Judge Rebecca Blackmore (New Hanover County).

On October 1, 2009, ADA Kristin Fetter and intern Mike Easley Jr qualified Senior Officer Pete Manukas with Raleigh PD as an expert in HGN in Superior Court in front of Judge Morgan (Wake County).

On November 18, 2010, ADA Matt Craven qualified Officer Charles Capps with Knightdale Police Dept as an expert witness in HGN in front of Judge Fox (Wake County).

On December 1, 2009, ADA Katy Palmeroy qualified Senior Officer PG Manukas as an expert in HGN, a Drug Recognition Expert (DRE), the administration of Standard Field Sobriety Tests (SFST), and the interpretation of SFST and DRE evaluation in front of Judge Ruth (Wake County).

On December 2, 2009, ADA Scott Gainer qualified Deputy George Hall as a DRE in front of District Court Judge Toni King (Cumberland County)

In January 2010, ADA Veronica Edmisten qualified Deputy Scott Ingram with Guildford County Sheriff's Office as an expert in

DRE and SFST in front of Superior Court Judge Ed Wilson (Guilford County).

On February 8, 2010, ADA Matt Craven qualified Senior Officer Pete Manukas as an expert in DWI detection and Officer Blake Dicello as an expert in HGN in front of Superior Court Judge Morgan (Wake County).

ADA Katie Pomeroy qualified Master Officer Bryan Bracey with Raleigh Police Department in two separate cases as a DRE and an expert in SFST and HGN in front of Judge Ruth (Wake County).

Deputy Craig Earnhardt was qualified as a DRE.

On February 17, 2010, ADA Dale Morrill qualified Detective Jeffrey of the Durham County Sheriff's Department as a DRE and expert in SFST in front of Judge Jim Hill (Durham County).

On February 22, 2010, ADA Katie Pomeroy qualified Master Trooper H.C. Ellefson as an expert in SFST, HGN, and DWI Detection in front of Judge Brewer (Wake County).

On February 26, 2010, ADA Suzanne Matthews qualified Deputy C.L. Galloway with Harnett County Sheriff's Department as an expert witness in DWI Detection, SFST, HGN and DRE In front of Judge Charles P. Bullock. (Harnett County).

ADA Kyle Pousson qualified Brian Smith with Forensic Tests for Alcohol as an expert in Retrograde Extrapolation in front of District Court Judge David LaBarre (Durham County)

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