

CHEETOS ABSORB ALCOHOL

I represented a man who had been at a family gathering and had several beers over the course of the evening. He and his wife were arguing as he drove his dually (truck with two tires on the rear axle per side) home on a relatively narrow country road. The police testified that he followed my client for over 5 miles and during that time my client crossed the center line twice and the fog line three times. He then stopped my client. When he approached the car he noticed that my client had so many cheetos in his mouth that the bright orange junk food was being ejected as he spoke to the officer. My client's speech was mumbled but I argued that was because of cheetos and not alcohol. I also argued that my client's driving was really very good and that driving a wide vehicle on a relatively narrow road for over 5 miles and doing nothing wrong except cross over the white line twice and the fog line (the line on the right side of the road) three times is really good driving. My client tested a .08 on the intoximeter test at the police station and I was successful in arguing that .08 without other supporting evidence was not enough to convince the Jury that he was guilty of driving while impaired. You see, in District Court the Judge sits as the Jury which decides the facts and the Judge who rules on the law. I made several legal motions hoping that the Judge would grant those and dismiss the case, but he denied all those motions. I believe that the fact that I made several good legal arguments that were close but not successful led to the Judge finding that a test right at the legal limit was not enough to convict. This case was a war of attrition; I eventually wore down the Judge's resistance by making lots of good arguments that my client should not be convicted. I eventually prevailed by arguing that no machine is perfect and the intoximeter does not tell us whether a .08 is a .089 or a .080. Even though it reads to four digits, North Carolina has determined that we can only know two. For that reason, if there is any error in the machine and the test is .080 then it could well be a .079. The State argued that the machine is perfect, and only has error on the plus side; in other words, it can only read lower than or equal to the actual breath test. Any normal intelligent adult knows that is simply not true of any machine. All machines have errors both in the plus or minus directions. The Judge found my argument persuasive and found my client not guilty.