

CASES THE DISTRICT ATTORNEY HOPES YOU (AND YOUR ATTORNEY) HAVEN'T READ

*State v. Richard Lewis Trexler*. The North Carolina Supreme Court announces the corpus delicti rule citing “*Opper v. U.S. (1954)*”. The Court ruled that the defendants admission to an element of the crime without the other corroboration is not enough to prove that element. In a driving while impaired the element that is often only provable by the defendants admission is the element of driving, which is sometimes not witnessed by a police officer particularly in a case involving an accident. Combined with the rules in *Crawford* (see below) the police must have independent evidence of driving, which is sometimes beyond their ability to gather on the court date.

*Robinson v. Life and Casualty Insurance Company of Tennessee*. The court ruled that a blood test for alcohol must be taken from the body before any other substance is injected into the body. I have used this case to suppress evidence of the blood test in cases where the defendant was treated and injected with medication prior to the blood test being administered.

*State v. Verdicanno* (unpublished). The North Carolina Court of Appeals ruled that a blood test taken three and a half hours after the arrest was not taken at a relevant time after driving. I have used this case to exclude blood and breath tests that were taken substantially after driving had occurred. It is often persuasive when the State does not know when the driving occurred, or the test is delayed for some time.

*Florida v. J.L.* The police were given a very accurate description of J. L. (he was a juvenile and we can not use his name) by an anonymous caller. The court ruled that in most cases an anonymous tip is not sufficient to allow the police to stop a person. I have used this case to prevent the police from using 911 or cell phone calls from civilians to provide justification for a stop of a vehicle.

*State v. McCarn*. The North Carolina Court of Appeals ruled that an anonymous tip to the police is not sufficient to justify a stop of a vehicle (adopting *Florida v. J.L.*). In this case, they held that the tip needs to specifically indicate criminal activity not merely the defendants presence or other lawful

behavior.

*State v. Knoll*. The court ruled that a defendant being held after being charged with driving while impaired for a substantial period of time has been denied the right to gather evidence at the only time that evidence would be available, thus the charges must be dismissed. I have used this case to argue that the defendant has been denied the opportunity to gather evidence at several important stages during the driving while impaired prosecution.

*State v. Ferguson*. The North Carolina Court of Appeals ruled that if a defendant is denied access to a witness at any time during the driving while impaired processing, all evidence gathered after that denial should be suppressed. Under *State v. Elson* (unpublished) the Court of Appeals also ruled that the State has the burden of proving no prejudice if there is a refusal or no chemical test and the defendant was denied access to a witness.

*Michigan Department of State Police v. Sitz*. The U.S. Supreme Court allowed a roadblock set up to detect driving while impaired drivers. The Court set out a number of rules that are often not followed in North Carolina roadblocks. In particular, the court stressed that the motorist should be allowed to make a u-turn as to avoid the roadblock if it seemed inconvenient to stop at that time. I have used this case to suppress evidence gathered after a roadblock.

*State v. Barnes*. The North Carolina Court of Appeals stated that at a roadblock, no individual officer may give discretion as to which vehicle is stopped or which driver is requested to submit to an alcohol screening test.

*City of Indianapolis v. Edmonds*. The U.S. Supreme Court found that a roadblock set up for detection of drugs is not allowed by the U.S. Constitution and substantially limited the purposes for which roadblocks are allowed.

*North Carolina v. Roberson*. The North Carolina Court of Appeals found that a defendant who had not proceeded through an intersection after a light turned green for five or ten seconds was not

sufficiently suspicious to allow the police to stop the defendant's vehicle. The Court said, "the evidence adduced by the officer could just as easily be explained as conduct falling within a broad range of what could be described as normal driving behavior."

*U.S. v. Wilson.* The Fourth Circuit Court ruled that when a police officer is unable to see the date on a temporary tag to determine if it is expired, the officer does not have the right to stop the vehicle to explore whether that tag is expired. I have used this case to argue that a police officer's mistake or inability to determine the vehicle's compliance with the rules of the road does not give the officer the right to stop that vehicle.

*North Carolina v. Felix Fisher.* The North Carolina Court of Appeals ruled that holding a defendant for a relatively short period of time was considered an arrest and must be justified by probable cause.

*State v. Falana.* The North Carolina Court of Appeals ruled that once the original purpose of the stop is finished the police need additional facts rising to the level of reasonable suspicion to continue to hold the driver.

*U.S. v. Brignoni-Ponce.* The United States Supreme Court ruled that a car stopped because it contained individuals who appeared to be Hispanic near the border was not justified by reasonable suspicion. All of the evidence gathered by the police after the stop of Mr. Ponce's car was suppressed.

*State v. Thompson.* The North Carolina Court of Appeals ruled that the defendant was required to be given his rights orally and in writing prior to the administration of the intoxilyzer test. I have used this case to argue that in some situations the defendant was not provided his rights in writing prior to the administering of the intoxilyzer test and thus those results were not admissible against him.

*Crawford v. Washington.* The United States Supreme Court found that evidence was not admissible without the person who developed that evidence in court to present the evidence. North Carolina Courts adopted this rule in *State v. Forrest* in May of 2004.

*State v. Myers.* In *Myers*, the defendant was arrested for driving while impaired and taken to the breath test room in Rowan County where he was read his breath test rights. The defendant asked that his wife

be allowed to be present during the administration of the breath test. The officer said “that might not be a good idea.” The Court of Appeals of North Carolina ruled that he had by that statement discouraged the defendant from exercising his right to a witness. Therefore, the results of that test were inadmissible. I use this case to argue that a officer not completely explaining the rights of the defendant or discouraging a defendant from exercising his constitutional and statutory rights should lead to the suppression of evidence.