

# Corpus Delecti Rule

I represented a young man who was charged with driving while impaired. He had ran off the road , drove a considerable distance into the woods, and was eventually stopped by a tree. When the police arrived, it was immediately apparent that he was impaired (he later blew more than double the legal limit). The officer asked what happened. My client provided the officer with the details of the incident including his drinking, his belief that he fell asleep while driving, and that he had no passengers in his vehicle. I argued that my client's confession without other evidence was not enough to establish the element of driving in the crime of driving while impaired. Though you would think that the defendants confession that he had an accident and he had no passengers would be enough, the law says that is not enough. The officer admitted that when he arrived at the scene several people were standing around along with my client and that it was not my client's vehicle that had been wrecked. The Judge ruled (under State v. Trexler) that the officer had not performed a complete enough investigation of the accident, that the State had not proven that my client was driving, and found my client not guilty of driving while impaired.

Move over law. I represented a young lady who was charged with driving while impaired. The police officer testified that he pulled her over because she had crossed the center line three times. I got a detailed description of the road from my client. From that description I knew there were parked cars along the side of the road that she was traveling, which narrowed her lane substantially. I was successful in getting the officer to admit that there could have been people walking in the vicinity and there could have been people in the cars. Therefore, the safest course of action would have been to move over to allow those people space to move. I also pointed out to the court that the "move over law" requires people to change lanes when approaching a police officer with a vehicle pulled over. The Judge found that although my clients behavior technically violated the law, that the law allowed exceptions to the driving to right half of the road rule, such as obstructions in the road, and found that the State had not proven that there was not some reason for my client to move over. The Judge was also persuaded by the argument that people are taught in drivers education to stay as far away from parked cars as is safe. The Judge then granted my motion to suppress all evidence after the stop of my clients vehicle. Thereafter, the Judge entered a directed verdict of not guilty.

High heel sneakers. I represented a young lady who had been out clubbing. She was wearing club clothes including a pair of four inch high heel shoes. A police officer stopped her for making a u-turn, which is not unlawful and could not be considered in the officers decision to arrest her. When the officer pulled her over, her passenger threw up on the sidewalk. The officer wanted to quickly start the process. The officer asked her to perform one field sobriety test, which was the walk and turn. In that test, you are directed to take nine heel to toe steps along an actual or imaginary line, turn around, and take nine steps back. The officer testified that she did not step off of the line, but she did not touch her heel to her toe on any of the steps as he had directed. I argued that her performance was exemplary though she did not follow that instruction. I explained that the instruction would have been overly difficult given the clothing she was wearing. I also argued that the low temperatures of the night along with her clothing caused her to be cold and shivering, which made her unable to stand stable as the officer had directed. The officer admitted that he was wearing a jacket and she was wearing nothing but her very flimsy club clothes. I then argued that the police officer made a rash decision and arrested her before he had probable cause. The Judge agreed with my argument and my client was found not guilty of driving while impaired.

High in the friendly skies. I represented a young man who had arrived at the Raleigh Durham Airport before noon after a long flight. During the flight he had about ten bourbon drinks. Apparently, several passengers had noted his intoxication. As he rode the shuttle bus to his parked car a woman called airport security and reported that an intoxicated person was about to drive his car. My client wobbled to his vehicle and started his vehicle. In North Carolina driving is defined as sitting behind the wheel of a running car whether it is moving or sitting still. The airport police immediately pulled in behind his vehicle to block him in. The client put the vehicle in park and got out of the vehicle. He blew .20 on the intoxilyzer. The police officer testified that the passenger on the shuttle bus pointed to my client when airport security arrived and said, "that is him". I argued under a long line of cases from North Carolina and the United States Supreme Court that the anonymous tip was not sufficient to give the police officer authority to stop the vehicle. Since my client had done nothing but start his vehicle, put it in reverse, and begin to back out of the parking space, the police officer could not testify that he had observed any bad driving. The police officer testified that the woman who had identified my client had not wished to give her name and he had not done any further investigation as to her identity. The officer also failed to ask the woman how she knew my client was impaired or any other questions that may have given him sufficient evidence to stop my client. The Judge then granted my motion to suppress, all evidence gathered after the stop was dismissed, and my client was found not guilty.

Police officer's don't like the rain either. I represented a young man who was charged with driving while impaired and was stopped for speeding. When the police officer stopped him it was raining. When the officer approached my client's vehicle, my client cracked his window and handed the officer his license and registration. He talked to the officer through the crack. The officer did not notice anything unusual and left to write my client a citation for speeding. When the officer returned, my client rolled his window down completely because it was only drizzling at that point. The police officer testified that he handed my client the ticket and my client held the ticket outside of the window in the drizzling rain for a period of time longer than the police officer thought was appropriate. That made the officer suspicious and he began to ask my client questions in regards to his drinking. The officer then asked my client to come to his vehicle, gave him a portable breath test, determined that he was over the limit, and arrested him for driving while impaired. I moved to suppress all of the evidence gathered after he took my client back to his vehicle based on a line of cases starting with *State v. Fisher* and *State v. Falana*. In those cases, the North Carolina Court of Appeals ruled that the police can not stop a vehicle for one crime and then hold the defendant to investigate a new crime without some additional evidence. I do not think the Judge believed the police officer's description of the events. My client told me that he immediately took the citation into the car in front of his steering wheel to look over the citation as the officer was explaining how to handle it. Based on this argument, the Judge found my client

Injection hearsay. I represent a man who was charged with driving while impaired and had a prior driving while impaired charge within seven years. The State's evidence against him was not overwhelming except that he tested over .16 on the intoxilyzer. I knew that the combination of that test result along with a prior offense could have resulted in one year active sentence in prison. I argued under *Crawford v. Washington*, that the affidavit of the intoxilyzer operator should not be admitted unless he was physically present to testify. In *Crawford*, the U.S. Supreme Court ruled that any evidence that is prepared for court is not admissible unless the person who prepared that evidence is available and is present in court. In North Carolina there is a statutory exception to the hearsay rule allowing admission of the affidavit of the intoxilyzer operator without his presence in District Court. However, I argued that *Crawford* is a constitutional decision and thus overrides a statutory exception written into the North Carolina General Statutes. I analogized the miscegenation statute, which prohibited interracial marriage that remained in the North Carolina General Statutes for several years after the U.S. Supreme Court had overruled *Plessy v. Ferguson* and ruled that discrimination based on

race was unlawful. In essence the Constitution overrules any statute or law. The Judge agreed with my argument and suppressed the result of the intoxilyzer and found my client not guilty. The District Attorney attempted to appeal that decision for fear it set a bad precedent and would increase his work load substantially. I was able to persuade the appellate Judge in that case in that the District Attorney did not follow the proper procedure from the rules of court and had the Judge dismiss the appeal.

Temperature defense. I represented a man who tested a .08, which is the legal limit in North Carolina. Judges in Durham have historically found defendants guilty with a breath test result of .08, unless you can convince the Judge to exclude the breath test. I know that the intoxilyzer machine assumes that your breath temperature will be thirty-four degrees centigrade and that each degree centigrade your breath temperature is higher than thirty-four degrees will result in a seven to twelve percent increase a persons breath alcohol reading. My client was in the hospital being treated with chemotherapy and radiation for prostate cancer. I was able to document his temperature hour by hour from his medical records. I called my expert witness (a registered nurse) to testify as to the effects of an increase of temperature on a breath alcohol samples and to the latest studies, which have shown that human breath temperature averages thirty-five degrees centigrade. The Judge allowed introduction of the breath alcohol level, but found that the State had not proved beyond a reasonable doubt that my client had a .08 blood alcohol level and entered a verdict of not guilty.

An oath that matters. I represented a man that was charged with assault on a female. He and his wife were both Muslim. He told me that his wife had fabricated the story of assault in order to extract money and favors from him. He testified that she had scratched herself, which left the marks the police accused him of making. Given that the Bible has little significance to a Muslim, I decided to hire a translator to bring the Koran (the Muslim holy book) and to provide a Muslim oath to the court in the hope that the wife would not be willing to lie after swearing to her God not to lie. I made a big show of having the translator and placed the Koran in the view of the prosecuting witness. After seeing the Koran and being told that there was a person who could provide a Muslim oath, the wife declined to testify and the charges against my client were dismissed.

Parental Participation. I represented a mother who was at a local high school watching her daughter play basketball. She felt that her daughter was receiving unduly rough treatment and was not being protected by the referees in the game. After a particularly hard foul the mother took it upon herself to administer a little parental justice. She came out of the stands, ran out onto the court, and proceeded to beat up the player who had fouled her daughter. She was arrested and charged with assault. I studied the case law and found that one of the forms of assault is assault by failing to defend. You are guilty of assault by failing to defend if a child or some invalid person trusted to your care is being assaulted and you make no effort to protect them. I argued to the District Attorney that this was a clear case of a mother obeying the law that she sincerely felt that her child was in danger and for that reason she should not be prosecuted. The District Attorney agreed with my argument and allowed her to enter into a deferred prosecution program, which he was unwilling to do before he heard my argument and was presented with my brief, cases, and statute. This led to a dismissal of all charges against my client.