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DWI / Court cites 'gaps in evidence'

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State trooper Chris Bell responded, noting that Hines smelled of alcohol and showed other signs of intoxication. He had a cut on his forehead, admitted to running a stop sign and crashing his truck, and was wearing one shoe, the match to which was found in the driver's side floorboard. Bell said that he asked Hines to fill out a witness statement form, but that Hines "passed out" in the back of a firefighter's truck before completing the form.

Hines refused a breath test, but a laboratory analysis showed that he had a .33 blood alcohol content. After the state closed its case, Hines unsuccessfully moved to have the charges dismissed for insufficient evidence.

In *Eldred*, according to court records, Avery County officers responded to a reported car wreck near Grandfather Mountain. They found a Jeep Cherokee stopped on the shoulder of Highway 221. One hundred feet of tire impressions, leading from a scuffed rock embankment to the right-side damaged Jeep, veered off the highway and into the grass. The Jeep was unoccupied, but police found its registered owner, Paul Eldred, walking two or three miles down the road. Eldred was twitching, authorities say, and said he didn't know what he was doing on the highway because he was "too smoked up on meth."

A deputy on the scene did not attempt to determine whether Eldred was actually under the influence of a substance.

Eldred, who had a head wound and claimed to be hurt, was taken to the hospital by ambulance. He was later joined by a state trooper, and reportedly admitted that he was driving his vehicle and had wrecked it "a couple of hours ago." Asked if he had been drinking or had taken any

arrest for DWI, but failed to ask him when he had last smoked, when he became impaired, whether he had consumed meth prior to or while driving, or what he did between the time he wrecked his vehicle and the time the deputy found him walking down the highway.

The trial court granted Eldred's motion to suppress, and the appeals court's opinion notes that the state presented no evidence of any laboratory test indicating the presence of any impairing substance in Eldred's blood or urine.

Suspicion not enough

Court of Appeals Judge Lucy Inman wrote that while "most anyone would surmise" and "might very well be right" about what happened with regard to Eldred's wreck, the court unanimously declined to impose "criminal liability based on conjecture."

The court noted several "gaps in evidence" while agreeing with Eldred's argument that the state failed to prove that he was impaired while he was driving.

In addition to not presenting any evidence of when the deputy found Eldred walking on the road, the deputy failed to determine whether Eldred's twitching and unsteadiness was caused by a substance or injury. The trooper didn't see Eldred until an hour and a half after the accident had been reported, and he failed to ask him about the timeline of his meth consumption or impairment. Further, no one reported seeing Eldred driving or knew what time the vehicle veered off the road.

Durham DWI attorney Marcus Hill, who was not involved with the cases but is familiar with the rulings, agreed with the court's reasoning.

"Even if the defendant is impaired when he encounters the police, if the time the driving/accident occurred

after the accident, or that it existed when the driving occurred," Hill said.

In the opinion, Inman cited *State v. Blizzard* in holding that the court was bound to follow its precedent: "When the facts and circumstances warranted by the evidence do no more than raise a suspicion of guilt, they are insufficient to make out a case and a motion to dismiss should be allowed."

No body, no crime

Pursuant to *State v. Trexler*, the *corpus delicti* rule, which protects a defendant from being convicted of a crime that has not been committed, is satisfied when the state shows that harm constituting a crime occurred and was caused by criminal activity. At that point, the state may use a defendant's confession.

Hill said the defense can work in DWI cases. In North Carolina, the state must prove that a driver had a BAC of at least .08 or is actually impaired before or while he was driving. Denning said that can be a "tricky matter when there is evidence that the defendant consumed alcohol (or other impairing substance) after driving."

Hill said that *Trexler* makes it less likely that someone who didn't commit a crime, but appears to have, should be convicted.

"A lot of folks who are being exonerated have confessed," Hill said. "*Trexler* says to the police and the courts, 'Your confession is not enough to convict you. I need to corroborate your confession.'"

Shea Denning of the UNC School of Government blogged about *Eldred* and spoke to Lawyers Weekly about its relation to *Hines*. Hines had argued that aside from his extrajudicial confession to a state trooper, there was no corroborating evidence proving that he was driving the wrecked car.