

Novel DWI defense: 'I had to'

by Phillip Bantz

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Sometimes you just gotta drive drunk.

Two North Carolina lawyers recently made that unusual argument to justify the actions of clients charged with DWI, and it paid off. Durham attorney Marcus E. Hill used the so-called "necessity defense" to win an acquittal in district court in July. A month earlier, George V. Laughrun II of Goodman, Carr, Laughrun, Levine & Greene in Charlotte relied on the same tactic to negotiate a lenient plea deal for a client.

Laughrun said his client was driving drunk because he needed to rush a badly burned buddy to the hospital. Hill said his client had no other choice but to get behind the wheel because his brother was stranded on the side of a dark rural road and needed a ride home.

In both cases, the defense attorneys needed to prove that their clients were thrown into the middle of an urgent situation not of their making, and had no other rational alternative to breaking the law.

"It's the same sort of argument that we'd make on duress," Hill said. "But it's not a terribly common argument."

During his client's bench trial, Hill said the prosecutor called his necessity defense "stupid" and told him "you have no chance to win."

Hill had argued that his client felt that he had to give his brother a ride because no cab companies serviced the area where he was stranded. His brother was walking alone on the side of a dark road in the middle of the night. Oh, and he was also drunk.

"I talked about the dangers of my client leaving his brother on the side of the road, drunk, cold and 20 miles from home at midnight," Hill said. "I was arguing that this was the reasonable thing to do."

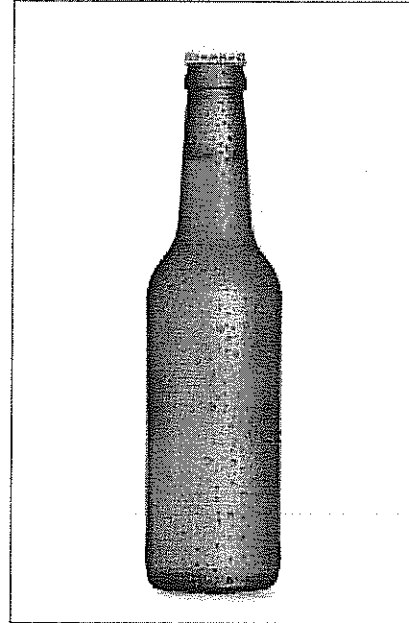
Laughrun's client, a college student, had been boozing around a bonfire when one of his buddies decided to throw gasoline on the flames and was burned. The client stole a neighbor's car off the street and was rushing his friend to the hospital when the cops clocked him going more than 100 mph and gave chase.

Officers had to use a spike strip to stop the car and ended up zapping the client with a Taser because he was so frantic, Laughrun said. His passenger made it to the hospital and survived, but a doctor was prepared to testify that he could have died if it had taken much longer to get him medical treatment, Laughrun said.

He added that his client had called 911 before deciding to go on the wild ride and was told that it would take at least 20 minutes for an ambulance to arrive.

His client faced a laundry list of violations: DWI, speeding, underage drinking, reckless driving, fleeing police, resisting arrest, unauthorized use of a vehicle and simple possession of marijuana. Cops found the pot in his pocket: "He didn't have a very good argument for that," Laughrun said.

But the necessity defense gave him enough leverage to negotiate a deal that allowed him to keep his license and stay out of jail. He ended up pleading to underage drinking and speeding and the judge entered a prayer for judgment continued on the DWI charge and payment of court costs.



The prosecutor, Mecklenburg Assistant District Attorney Anna C. Greene, said the necessity defense factored into the deal.

"No one disputed that his friend had been burned, but there could have been some issue at trial as to whether that was why he was driving the way he was driving," she said. "Nevertheless, we did consider that he had a colorable necessity defense, which is extremely rare, especially in the DWI arena."

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