

DELAY, DELAY, DISMISSED

DRIVER PRACTICED IN BEATING CHARGES

Man says he was drunk all 9 times he was arrested – he was convicted 3 times

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Nine times he's been charged with drunken driving in North Carolina. So, he says, he knows how to beat the system.

He hit a highway wall once. He got nailed driving 120 mph another time. He's crashed into a truck, driven the wrong way on College Street, and passed out behind the wheel, he says.

Yet this Union County man managed

to evade court punishment on six of the nine DWI charges against him.

His secret: delay his court cases as long as possible.

"That was always the key," said the man, who told his story on the condition he not be named. "My lawyer would put off my case for a year. That way, the officer would leave, or people would retire. Or he'd wait until a judge came along he knew would be easy."

In all nine cases, the man admits he was drunk. Yet four times, prosecutors dismissed the charges. Twice, judges found him not guilty. And although he was convicted three times, the convictions came so many years apart, they did nothing to stop his behavior, he says.

Delays in resolving DWI cases increase the chances that they'll be dismissed, court officials say.

As cases grow older, it becomes more likely key witnesses will move, notes will be lost and memories will fade – all factors that may lead to dismissals.

Counties that take longer to resolve DWI cases tend to have higher dismissal rates, an Observer analysis of court data shows.

Statewide, DWI cases typically take about 5½ months to resolve. And N.C. prosecutors permanently dismiss about 10 percent of DWI cases involving defendants who test over the alcohol limit or refuse tests.

Cumberland County, where Fayetteville is located, usually takes about eight months to resolve DWI cases. Cumberland has about 3,700 pending charges, the state's largest backlog. The county's prosecutors dismiss about 30 percent of DWI charges, one of the state's highest

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rates.

Gaston County typically takes almost a year to resolve DWI cases – longer than any other N.C. judicial district, state courts data show. Mecklenburg usually takes about seven months and has about 2,700 DWI cases pending. Both Gaston and Mecklenburg permanently dismiss a larger percentage of DWI cases than most N.C. counties.

The Union County man said he learned to exploit the system's weaknesses.

He'd refuse to take breath tests and road-side sobriety tests to limit the evidence against him. He always hired the best DWI attorney available to sniff out flaws in the cases against him: A bad arrest. Unreasonably long processing times. Lack of evidence.

A professional with a six-figure salary, he says he quit drinking in June – thanks to support from his wife, children and church. He says he volunteered his story because he wants to close the loopholes that allowed him to be so dangerous on the road.

"I'm a systematic person. I learned how to beat DWI charges. Now I'm learning how not to drink."

— STAFF WRITER TED MELLNIK CONTRIBUTED.

When police don't show, dismissals go up

DWI from 1A

Dismissals result in one of every five DWI suspects going free. They're the single largest reason the courts don't punish thousands of drunken driving suspects or force them to get alcohol abuse treatment.

The charges usually aren't dismissed because of weak evidence. Mostly, they're tossed out because either the police officers or the suspects themselves don't show up for court, the Observer found.

"That makes me sick, knowing that one out of five are dismissed for whatever reason," says Cheryl Jones of Charlotte, a national vice president for Mothers Against Drunk Driving.

"...That just encourages them to do it again that much faster. They're getting an education, but not the right one."

N.C. law says that a driver with an alcohol concentration of 0.08 percent

or more commits the offense of driving while impaired. But before suspects are convicted at trial, the arresting officers must testify.

In a study of a year's worth of DWI dismissals involving defendants who tested over the legal limit in Mecklenburg County, the Observer found that about 40 percent of those cases were thrown out because police officers didn't appear in court.

Sometimes the officers had military duty or other responsibilities that made it hard for them to attend court. Other times, the Observer found, extra effort by officers, their supervisors or court officials would have made convictions more likely.

Among the DWI suspects whose cases were dismissed in Mecklenburg after officers failed to show up for court:

■ A Charlotte man who tested at nearly three times the alcohol limit after staggering and falling in front of police.

■ A driver passed out behind the wheel of his idling car on Independence Boulevard.

■ A man who had at least four prior DWI convictions, and more than twice the legal amount of alcohol in his body.

In Mecklenburg's criminal justice system, where police juggle many responsibilities and judicial officials scramble to handle hundreds of cases each day, many things can go wrong. Subpoenas may never get to police officers who've resigned. Officers who do get subpoenas may have conflicting responsibilities. And court officials don't have a system to look closely at why dismissals occur and how to prevent them.

Court officials usually don't give DWI cases nearly the time and attention devoted to felonies such as murder and aggravated assault. But drunken driving cases can be just as deadly.

Bart Menser, Mecklenburg's deputy district attorney, says the courts are a "low-budget, low-tech operation," but officials are



GAYLE SHOMER – STAFF PHOTO

Robin Yoho holds an Independence High ring and a photo of her son Ryan, taken at age 3, in a pendant passed down from her mother. Ryan, 19, was killed in a crash with another driver who police say had been drinking. On a boulder at Independence High, friends painted: "In Loving Memory of Ryan."

doing what they can. Studies have shown that per capita court expenditures in North Carolina are among the nation's lowest.

"If a hospital ran like this, they'd shut it down," Menser said.

'Just arrest me'

Dismissals let loose drivers like Shannon Rae Britt.

After a traffic stop in Matthews in March 2000, Britt told a police officer she was drunk, according to the officer's court affidavit. "Just arrest me," she reportedly told the officer.

Britt, who had been convicted of DWI three years earlier, had an open bottle of champagne in her car and tested at 0.14, well over the state's 0.08 legal limit.

The case was dismissed in September because an officer didn't show up in court.

Two months later, Britt was driving on U.S. 74 in Monroe when she rear-ended another car, according to a police report. Then she drove off, crossed the median and struck a tanker truck carrying 7,800 gallons of diesel fuel. She tried to flee, police reported, but crossed into the median again and hit a culvert.

Concord resident Sherman Torruellas was driving the truck, and said a massive diesel spill or fire could have resulted if Britt's car had hit the tanker instead of his cab. "It could have been catastrophic," he said.

Britt refused to blow into the Intoxilyzer, but was convicted of DWI nonetheless.

Torruellas wonders why the earlier DWI charge was dismissed.

"There needs to be some sort of wake-up call," he said. "Because this could have been worse than it was."

Britt was charged with DWI a third time in 2001 after witnesses reported she had driven into a house. She declined alco-

Justice for Some?

Melody Parker, her husband and her 13-year-old son were headed to the movies near her north Mecklenburg County home in February when a car without headlights on slammed into their van.

Parker's neck was injured. Her husband suffered serious knee injuries, and has had two surgeries.

Tests showed the driver's alcohol level was 0.16 percent – twice the legal limit. But the case was dismissed after a police officer failed to show in court.

"If we keep letting people off who should be paying their dues, what's that saying?" Parker asked.

Last year, she said, her 25-year-old son was convicted of DWI, lost his license for a year and learned a lesson.

And that, she said, is what ought to happen.

hol and sobriety tests, police said, and the case was dismissed the following year when witnesses didn't show up for court.

Britt, now 27, couldn't be reached for comment.

When suspects repeatedly get cases dismissed, they can avoid stiff punishments that come with multiple DWI convictions. If, for instance, drivers are convicted of DWI four times within seven years in North Carolina, they are guilty of a felony punishable by up to four years in prison.

"When you look at the statistics of the people causing the problems, it's obviously the repeat offenders," said N.C. Senate Majority Leader Tony Rand, who serves on a task force that's trying to improve the way North Carolina fights drunken driving. "That's why we give law enforcement the tools to stop it. It's obvious we're not having the sort of impact we hoped to."

Officers' absences hurt

About 13 percent of DWI charges involving defendants who test over the alcohol limit or refuse tests are permanently dismissed in Mecklenburg. That's slightly higher than the 10 percent state average. An additional 7 percent of DWI charges are dismissed, at least temporarily, when suspects don't show up for court. That's a bit lower than the state average.

Often, the decision to dismiss DWI cases has little to do with the evidence police collected.

The Observer studied the more than 340 DWI cases that were permanently dismissed by Mecklenburg prosecutors during the year ending in February, even though tests showed the defendants tested over the alcohol limit.

In some cases, civilian witnesses didn't show in court. Or prosecutors lacked evidence that the suspect was driving.

But more than 230 of those cases, or two of every three, were dismissed because officers failed to show in court.

Court officials and police officers interviewed said they were previously unaware how many DWI cases were dismissed because officers didn't show in court.

Some law enforcement officers had been on leave for military duty, in training, sick or on vacation when their cases were

scheduled.

In more than 100 cases, the officers' absences weren't explained in court documents.

The officers were employed by various law enforcement agencies, including the N.C. Highway Patrol, the Charlotte-Mecklenburg Police Department and nearby suburban departments.

When officers don't appear, prosecutors typically ask judges for a postponement. Judges usually allow each side to delay the case a time or two.

If, after several postponements, officers fail to show, judges often refuse to reschedule the cases again. Then prosecutors, deprived of their key witnesses, usually dismiss the cases.

In more than 70 dismissals the Observer studied, the officers who didn't show in court had resigned or been fired.

At least 20 of state Trooper Brian Huffstickler's DWI cases were dismissed early this year when he resigned from the Highway Patrol.

Huffstickler said no one called or subpoenaed him for those cases. If they had, he said, he would have gone to testify.

"They must just assume I didn't want to be bothered with it," said Huffstickler, who has since returned to the Highway Patrol. "But I would have gone down there."

In one case, he said, an officer who helped him arrest a DWI suspect called him during his absence, asking if he'd come to court. Huffstickler did, and the suspect was convicted.

Now, Huffstickler said, he'd "love to have those cases back." And he worries about the drivers whose cases were dismissed.

"It's like a kid," he said. "If they got caught and not punished, what is the deterrent from doing it again?"

'I will make errors'

As a Highway Patrol trooper, and later as an ABC officer, T.L. Ashby has arrested many drunken drivers. MADD has honored him for his efforts.

Because Ashby is involved in so many cases, and his cases often involve other officers, there is more potential for scheduling problems – and dismissals.

During the year ending in February, at least nine of Ashby's DWI cases were dismissed after