

EXAMINING DWI CASES

Looking at why, how of acquittals

SUNDAY N.C. judges are acquitting more than a third of drunken driving suspects who test above the state's legal alcohol limit and contest the charges in court. State law says drivers commit DWI if their alcohol concentration is 0.08 percent or higher. But many judges routinely acquit defendants who blow 0.08 or 0.09.

TODAY In Mecklenburg County, DWI conviction rates vary dramatically among judges, from more than 80 percent to as low as 40 percent.

The numbers aren't lost on the county's defense lawyers. The Observer found they're steering their DWI cases to judges with the lowest conviction rates, and winning. More than a dozen Mecklenburg District Court judges heard DWI cases during a 14-month period, the newspaper found. The four judges with the lowest conviction rates handled a disproportionate share: 61 percent.

TUESDAY Some drunken driving suspects have developed a strategy to help their chances of avoiding conviction after being stopped by police.

NORTH CAROLINA

The law defines impaired driving

North Carolina's DWI law:

"A person commits the offense of impaired driving if he drives any vehicle upon any highway, any street or any public vehicular area within this State:

- (1) while under the influence of an impairing substance; or
- (2) after having consumed sufficient alcohol that he has, at any relevant time after the driving, an alcohol concentration of 0.08 or more."

MECKLENBURG JUDGES

Conviction rates vary widely

Listed below are Mecklenburg judges who handled at least 50 DWI trials and had the highest and lowest conviction rates during 2003 and the first two months of 2004. Conviction rates listed are for all DWI trials before each judge. The rate includes cases in which suspects submit to alcohol tests, and those who refuse.

The average conviction rate for DWI trials in Mecklenburg is 56 percent, according to an Observer analysis. The N.C. average is 60 percent.

The "0.08-plus conviction rates" describe each judge's record in trials where defendants tested over the legal alcohol limit. Mecklenburg's average: 59 percent. The state average: 63 percent.

Judges with low conviction rates

Jerome Leonard



DWI trials: 225
Convicted: 91
Conviction rate: 40 percent
0.08-plus conviction rate: 37 percent
Leonard declined to discuss his record presiding over DWI trials, but said he follows the law. "We protect the integrity of the legal system. And sometimes that's not popular."

Phil Howerton



DWI trials: 140
Convicted: 67
Conviction rate: 48 percent
0.08-plus conviction rate: 48 percent
"Close calls go to the defendant. I'm not finding them innocent. I'm finding them not guilty. There was not significant evidence to find without a reasonable doubt that the defendant was appreciably impaired."

Nate Proctor



DWI trials: 93
Convicted: 46
Conviction rate: 49 percent
0.08-plus conviction rate: 50 percent
"Of course I worry about whether I just acquitted one of Charlotte's top 10 drunk drivers. But convicting every suspect is not our job. We're supposed to decide the case on the evidence."

Fritz Mercer



DWI trials: 62
Convicted: 31
Conviction rate: 50 percent
0.08-plus conviction rate: 58 percent
"What the public wants you to do is find everyone guilty. But I can't do that. I don't think that would be following the law."

Judges with high conviction rates

Hugh Campbell



DWI trials: 57
Convicted: 46
Conviction rate: 81 percent
0.08-plus conviction rate: 92 percent
"If the Intoxilyzer reading is .08 that's a sufficient level to cause someone to be impaired. There's not much wiggle room in the law in my view."

Hugh Lewis



DWI trials: 50
Convicted: 42
Conviction rate: 84 percent
0.08-plus conviction rate: 89 percent
"Everyone is going to receive a fair trial in my courtroom. I'm going to hear the evidence in every case and scrutinize it. I call each case as I see it."

Tom Moore



DWI trials: 56
Convicted: 48
Conviction rate: 86 percent
0.08-plus conviction rate: 95 percent
"If the Intoxilyzer reading is .08 or more and they're driving and that's the evidence before me, to me that's guilty. That's the law. In DWI cases, the machine is the evidence."

DWI: SOBERING
Attorneys shop for

Mecklenburg from 1A

Leonard acquitted more than 130 DWI suspects overall, or six of every 10 tried in his courtroom, an Observer study of court records for 2003 and the first two months of 2004 found. That's the third highest number of acquittals among N.C. judges.

Leonard's conviction rate is 40 percent. The statewide average is 60 percent.

A 68-year-old retired District Court judge, Leonard was called in on more than 100 days last year to help handle massive District Court caseloads. He declined to talk about his record on DWI cases.

"I just don't keep score," he said. "Never have. Never will."

While Leonard routinely acquits suspects who test just over the legal limit, he's tougher on those who blow 0.10 or higher. His trial conviction rate on those cases is about 80 percent.

Three other Mecklenburg District Court judges - Phil Howerton, Nate Proctor and Fritz Mercer - have overall conviction rates of about 50 percent. Mercer, Mecklenburg's chief District Court judge, assigns Leonard and others to the courtrooms where DWIs are handled.

In the 14-month period the Observer studied, about 80 percent of the almost 4,500 DWI suspects who appeared before judges in Mecklenburg County pleaded guilty. During that time, about 420 defendants avoided trials by pleading guilty to DWI in Leonard's courtroom.

But the Observer found suspects who go to trial in Mecklenburg are more likely to get off than those in most N.C. counties.

Mecklenburg judges convict 56 percent of those who go to trial, below the state average of 60 percent. Six of seven neighboring judicial districts had higher conviction rates than Mecklenburg. Only Gaston County, with a 51 percent conviction rate, was lower.

Mecklenburg judges found 373 drunken driving defendants not guilty during the 14-month period. Of those, more than 220 had alcohol levels over the limit.

More than 130 of those acquitted had refused alcohol tests. DWI suspects are informed they'll lose their driver's license for a year if they refuse the test. They can't get it back even if they're acquitted.

Few N.C. judges acquit more DWI suspects than Mecklenburg's Leonard, who is known by some police and highway safety advocates as "Let 'em go Leonard."



JEFF SENER - STAFF PHOTO

Charlotte-Mecklenburg police Officer Tom Gale shows a driver how to walk a line during a sobriety test at a DWI checkpoint. Suspects lose their driver's license if they refuse to take the Intoxilyzer test.

Defense lawyers jockey to get their cases in front of Leonard, as well as Howerton, Proctor and Mercer.

Mecklenburg County District Attorney Peter Gilchrist said some judges are ignoring North Carolina's DWI law, which prohibits driving with an alcohol level of 0.08 or more.

"All these acquittals really gut our efforts to get drunk drivers off the streets," Gilchrist said. "Judges are not following the law."

Judges with lower conviction rates disagree. They say unless they see other signs of impairment, they're often reluctant to convict suspects who register just over the limit or refuse the test. They also question the accuracy of the Intoxilyzer, the instrument the state uses to test alcohol levels.

"In cases where there's no other evidence but a .08, I'll probably acquit the defen-

dant," Proctor said.

But in more than 70 percent of the cases where Mecklenburg judges acquitted suspects, there were signs of impairment besides Intoxilyzer readings, the Observer found. Among the 373 people found not guilty in the 14-month period:

- Almost 200 failed or performed poorly on field-sobriety tests.
- Thirty-nine were arrested after accidents.
- More than 200 were stopped for poor driving.
- Fifty had open containers of alcohol or drugs in their vehicles.

From 2002 to 2003, the number of DWI trials in Mecklenburg increased about 80 percent. Acquittals, meanwhile, doubled.

Linda Roberts lost her son Greg to a drunken driver in 1999. He was one of more than 5,500 people killed in alcohol-related crashes in North Caro-

lina during the past decade.

Roberts, who recently ran Mecklenburg's Mothers Against Drunk Driving chapter, said she worries about the consequences when judges acquit drivers who show clear signs of impairment.

"What's happening in our courtrooms is terrible," Roberts said. "I knew things were bad because of all the calls I get from law enforcement officers. I didn't know they were this bad."

"If we keep putting offenders back on the road," she warned, "more people are going to get killed."

7 tried, 7 acquitted

On Dec. 18, 2003, in Courtroom 2209 at Mecklenburg's courthouse, Leonard acquitted seven DWI suspects - everyone who pleaded not guilty before him that day, according to court records. It was the most

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ALTERNATIVE TO JAIL

TREATMENT COURT PRAISED

Judges with low conviction rates and drivers say recovery priority

BY GARY L. WRIGHT
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Staff Writers

Three years ago, after his second drunken driving conviction, Jesse Younge was given a choice by the judge: spend six months in jail or participate in Mecklenburg's DWI treatment court.

Younge opted for the yearlong treatment court and has been sober for 2½ years. He credits the Mecklenburg judges who ran the treatment court with helping him recover from alcoholism.

District Judge Phil Howerton is the main architect of the county's acclaimed drug treatment courts. The first of their kind in North Carolina, the courts are designed to help alcoholics and drug addicts recover.

Howerton has one of the lowest DWI conviction rates among Mecklenburg judges. A former Marine and prosecutor, he scoffs at critics who think he's soft on DWI suspects.

Howerton is a recovering alcoholic who has touched the lives of hundreds of addicts and alcoholics since creating the innovative drug treatment court in 1995 and the DWI treatment court five years later. He believes his bout with alcoholism makes him savvy in dealing with drunken drivers.

"I know these people who drink and drive.

They're doing it every night," Howerton said. "The treatment court is for the guy who has been drinking and driving since he was 16 years old - every damn night."

Through that court, Howerton said, "this county has done more about drunk driving than any other county in the state."

Even as highway safety advocates raise concern that too many DWI suspects are getting off in Mecklenburg County, they praise the treatment courts that work with addicts and alcoholics.

"The treatment court gives people a chance to turn their lives around by getting them the help they need," said Cheryl Jones of Charlotte, a national vice president of Mothers Against Drunk Driving.

People repeatedly convicted of DWI are selected for the treatment court. They're required to attend Alcoholics Anonymous meetings and outpatient treatment every week for a year. They are given weekly drug and alcohol tests and must return to court every month for a progress review.

Mecklenburg court officials say the treatment court works. They say the re-arrest rate for drug offenders not involved in a treatment court is 67 percent. For participants in the DWI treatment court, the re-arrest rate is 11 percent.

The DWI treatment court has won an award from the National Commission Against Drunk Driving, after being nominated by Mecklenburg's MADD chapter. This year, the National Drug Court Institute selected Mecklenburg's DWI treatment court as a model to

host training for jurisdictions across the country planning to set up similar courts.

There are nearly 1,200 drug and DWI treatment courts in 49 states, including 24 in North Carolina and more than 20 in South Carolina.

Mecklenburg District Judge Jerome Leonard helped Howerton set up the drug and DWI treatment programs. Leonard, a retired judge who's often called in to help handle District Court cases, acquits more DWI suspects than any other Mecklenburg judge.

Leonard said he's not so interested in his conviction rate. "I think recovery is the answer. Not statistics," he said.

In court, Leonard talks knowledgeably about the recovery process. He volunteers with a group that works to help drug-addicted and alcoholic lawyers. The judge says he's had "an interest in recovery for years."

Leonard said the court's biggest challenge is dealing with repeat offenders.

"Unless you interrupt that script, that person is going to continue to have a problem with alcohol," Leonard said.

"There's where DWI treatment court is unique. They get their lives turned around in recovery, and we don't see them again."

Younge praised the judges.

"They guided me through the program and showed me another way of life," he said.

Younge, 47, said alcohol no longer drives his life.

"If I hadn't gotten help, I figured I would be dead from an overdose or from driving drunk," he said. "Today I can look in the mirror and like what I see."