

Affidavit defect leads to acquittal on DWI

At trial, William B. Bishop, 41, Wanchese, pleaded not guilty and was found not guilty of impaired driving. At issue was the affidavit of the officer administering the Intoxilyzer test. Dare Sheriff's deputy Jeff Ambrose testified that on April 28 at 1 a.m., he observed Bishop swerve and cross over highway lines on the road to Wanchese. Bishop had a strong odor of alcohol but no trouble walking. Ambrose reported that Bishop said he had a few beers at a friend's house. Defense attorney Kris Felthousen objected to the admission of the affidavit accompanying the results of the Intoxilyzer test, which was administered by another officer. Felthousen argued the affidavit was fatally defective. No observation time was noted and no maintenance period was indicated. Felthousen asked for suppression and Judge Barnes ruled the Intoxilyzer reading was not admissible. After argument, Judge Barnes found Bishop not guilty because the evidence was not sufficient. The Intoxilyzer reading was 0.09.