

Low Intoxilyzer leads to acquittal

A 27-year-old Nags Head man was found not guilty of driving while impaired by a Dare County Superior Court jury on Wednesday, despite registering over the legal limit of alcohol in his breath at the time of arrest.

Presiding was Judge Jerry Tillett, and assistant district attorneys Robert Trivette and Amber Davis were prosecuting for the state.

Craig L. Freeman was driving a friend home to Kitty Hawk after

attending a lip sync contest at Kelly's Restaurant Oct. 20, 1998 when he was pulled over by Kill Devil Hills Police Officer Kelly Lawson.

Lawson testified her attention was drawn to Freeman's vehicle because he was weaving within his lane and crossed the center line. When Freeman took the Intoxilyzer test after being arrested, he registered a 0.10. The legal limit is 0.08.

Freeman's attorney Kris Felthousen argued about the credibility of the Intoxilyzer machine and pointed to Lawson's testimony that he performed field sobriety tests accurately that night.

"Everyone weaves within their lane of travel," Felthousen said during closing arguments.

Questioning the credibility of the Intoxilyzer test, Felthousen said, "Are we going to assume it was all working properly?"

"A machine is a machine and we don't have trial by machine," he said, concluding that the evidence begs a verdict of not guilty.

Robert Trivette, arguing for the state, brought to the attention of

the jury that the law does not require Freeman to have been drunk to be guilty of the charge, but only appreciably impaired.

"I am not saying he was drunk, but he was impaired," Trivette said. (Lawson) told you just the way it was, just what she saw, and she saw a person appreciably impaired."

Lawson testified smelling a moderate odor of alcohol from Freeman and glassy eyes.

According to the law, Trivette said, "if his breath is over a certain level, he is guilty."

The prosecutor added that the machine always rounds down, giving the person the benefit of the doubt.

"The purpose of this statute is to prevent tragedy," Trivette said.

The jury returned a not guilty verdict.