

# Two similar DWI cases, but verdict not same

Thursday, August 3, 1995,

This is the story of two different driving while impaired trials in Dare County, the place that is joked about by judges and loved by defense attorneys because of an unexplained leniency of juries in DWI trials.

The reputation of Dare County juries to easily turn a not guilty verdict gives many defendants hope, and has resulted in scores of driving while impaired cases becoming backlogged on the Superior Court calendar awaiting trial.

Sometimes it's worth taking a driving while impaired case to trial and sometimes it's not, as two men learned in Superior Court this past week.

The two cases shared a few similarities. Both men were stopped for speeding at night. Both men were young, clean-cut professionals. Both men admitted to drinking alcoholic beverages before being stopped. Both men registered well above the legal 0.08 on the Intoxilyzer. Both men testified. And both of their lawyers used the same argument — questioning the validity of the Intoxilyzer machine.

But the one man, the one who offered two witnesses on his behalf and registered lower on the Intoxilyzer was found guilty, while the man with no witnesses and a higher Intoxilyzer reading was acquitted.

The first trial, held on Wednesday, was that of Steven Thomas Conrad, a 27-year-old attorney from Falls Church, Va. Attorney John Graham represented Conrad and assistant District Attorney Robert Trivette prosecuted the case.

Conrad was here on vacation, staying at a cottage in Rodanthe. He was stopped by State Highway Patrol Trooper Al Joyner on May 14, 1994 at 11 p.m., a few hundred yards from his rental cottage on N.C. 12, after picking up a friend from the Froggy Dog restaurant.

Trooper Joyner testified that he clocked Conrad speeding 55 in a 35 mph zone, and that his car made an abrupt movement over the fog line before he pulled him over.

Joyner said Conrad was driving a convertible and would not look at him. With Conrad in the patrol car, Joyner said he immediately smelled alcohol and he said that Conrad told him he had just left the Froggy Dog and "had a couple." After a few preliminary tests, Joyner arrested Conrad for DWI and took him to Manteo. The trip took 45 minutes and Joyner said Conrad fell asleep on the way.

testified that he saw Conrad drink four or five beers at the cottage before he left with his girlfriend to have dinner at the Froggy Dog, with Conrad staying at home. Bellinger said he and his girlfriend argued at the restaurant and she left him there, so he called Conrad to pick him up. When Conrad arrived, Bellinger said he got a beer from a cooler in the trunk of Conrad's car. Bellinger testified that the reason for Conrad's crossing the fog line, was that he had told Conrad the wrong street to turn on to get home.

Conrad testified to the same story. He said he had five beers between 6 and 11 p.m. He said he did not go to sleep on the way to Manteo and that he did not feel impaired.

Another witness was Jane Parham, a friend, whom Conrad called in Vienna, Va., for help while at the Detention Center. Ms. Parham said Conrad asked her to call attorneys for him and asked her to try to line up a blood test for him at one of the local medical centers. She testified from notes she had made while on the phone with Conrad that evening. She was unable to do anything he asked her to in the 30 minutes time the law allows it to be done. She said Conrad was coherent and not slurring during their conversation.

The other case was that of Scott Brothers Smith, 38, of Manteo.

Smith was represented by Attorney Kris Felthousen and the case was prosecuted by assistant D.A. Mark Warren.

Smith was stopped by Nags Head Officer Kevin Brinkley on June 11, 1994 at 2 a.m. on U.S. 158 after leaving Kelly's. Brinkley stopped Smith for speeding 61 in a 50 mph zone and for jerking abruptly into the passing lane as he approached a car in front of him.

Brinkley said he immediately smelled alcohol coming from Smith's vehicle and noticed that his eyes were red. Brinkley said Smith told him that he'd had several drinks, but he did not think he'd had so many that he was impaired.

Brinkley said Smith's speech was very slurred and that he could not say his ABC's properly. Smith was able to count from 69 to 52 but Brinkley said it was slurred.

Smith registered 0.16 on the Intoxilyzer.

Smith testified that he had gone to Sam and Omie's with his girlfriend at 9:30 p.m. and had one

and 2 a.m. and danced to the band.

Smith said he was driving defensively when he pulled abruptly into the turn lane because the car in front of him had slowed down considerably by letting off the gas without braking.

The lawyers in the two cases, Graham and Felthousen, both used the same tactics on cross-examining the police officers. They asked for many details about the machine and tried to establish a question in the jurors' minds about the validity of the machine. Questions about what types of things, such as acetone, body temperature, police radios, certain foods, and diabetes, can affect an Intoxilyzer reading were asked. In final arguments, both lawyers argued that the Intoxilyzer is not foolproof.

The jury in Conrad's case found him guilty of speeding and driving while impaired in less than five minutes. The jury in Smith's case found him not guilty of driving while impaired in about 10 minutes, but did find him guilty of speeding for which he was charged \$10 plus court cost.

Conrad was sentenced on a level five to 60 days suspended, one year unsupervised probation, a \$75 fine plus the cost of court, ordered to get a substance abuse assessment and not to drive in North Carolina for 30 days.