

## State v. Daniel Tees Up An Analysis of Prejudice

Posted By [Shea Denning](#) On December 9, 2010 @ 1:37 PM In [Motor Vehicles, Procedure, Uncategorized](#) |

North Carolina's implied-consent laws were substantially amended in 2006 to, in the words of the Governor's task force recommending the change, "prevent dismissals under *Knoll*." In *State v. Knoll*, 422 N.C. 535 (1988), the court ordered that charges of impaired driving against defendants in three separate cases be dismissed because the magistrate in each case violated statutory provisions governing pretrial release, and, as a result, defendants were prejudiced in their ability to gain access to witnesses.

*Knoll* and its progeny are discussed at length in this [bulletin](#)<sup>[1]</sup>. There are no reported appellate decisions post-*Knoll* determining that dismissal of implied consent charges is warranted for a statutory violation of provisions governing pretrial release. Indeed, cases in *Knoll*'s wake demonstrate that prejudice will not be readily inferred from a statutory violation, even if it results in the defendant's unlawful detention.

The implied consent procedures enacted for offenses committed December 1, 2006 or later and providing for access to witnesses during a defendant's detention are designed to ensure that a defendant is afforded the evidence necessary to her defense, or, to take a more cynical view, to defeat any argument that a defendant was prejudiced by her detention.

One might legitimately question whether a defendant permitted access to witnesses in jail can ever show prejudice from an unlawful detention. The dissenting opinion in [State v. Daniel](#)<sup>[2]</sup>, decided this week by the court of appeals, provides the state supreme court (which has not weighed in on the issue since *Knoll*) with an opportunity to address that issue.

The defendant in *Daniel* was stopped by the Charlotte-Mecklenburg police while driving around 8:30 p.m. on December 29, 2007, and was subsequently arrested for impaired driving. Two hours later, she submitted to a breath test, without calling an attorney or witness, which revealed an alcohol concentration of 0.17. Defendant's friend, Jack Bruce, walked to the scene of her arrest to take possession of defendant's car. A police officer gave Bruce the keys even though he smelled alcohol on Bruce.

Bruce then went to the jail to retrieve the defendant, arriving sometime between 11:00 p.m. and 12:25 a.m. He talked to an unidentified woman behind a window, presumably a magistrate, who asked him if he had anything to drink that day. Bruce said he had a beer with supper. The woman told Bruce the amount of the bond and the charges and "insisted that [he] needed to get a female to get [defendant] out." Slip op. at 3. At 12:40 a.m., Bruce met for eight minutes with the defendant, who appeared upset, had been crying, and had "good" speech. Defendant was not, however, released into Bruce's custody until 6:34 p.m., nearly a full day after she initially was stopped.

The defendant moved to dismiss the charges based upon prejudice resulting from her unlawful detention. The trial court denied the motion, concluding:

It appears that that magistrate determined Mr. Bruce not to be a sober, responsible adult willing to assume responsibility for the defendant. Now, whether or not I agree with that determination, it doesn't matter. I'm not sure I would have agreed if I had been faced with the same decision when she made that decision. And there is at least some evidence that tends to support that determination.

For that reason, my conclusion is that the violations, if any, of the defendant's rights under the statute G.S. 15A-534.2 . . . had not been violated so f[il]agantly at least so as to bear a dismissal of these proceedings.

Slip op. at 17 (Elmore, J. dissenting).

The jury subsequently found the defendant guilty of impaired driving. Defendant appealed from the denial of her motion to dismiss.

After noting that its review was limited to whether competent evidence supported the trial court's findings and conclusions and that dismissal of charges was a "drastic remedy," the court of appeals concluded that it was not faced with the "dilemmas" that existed in *Knoll*. First, the court noted that *Knoll* differed procedurally in that the **trial court** in *Knoll* found substantial statutory violations and prejudice, those findings were "in no way challenged," and the evidence supported those findings. In *Daniel*, in contrast, the trial court **denied** defendant's motion to dismiss based upon its determination that the magistrate determined Bruce not to be a sober, responsible adult, a conclusion the appellate court found supported by the officer's smelling of alcohol on Bruce earlier in the evening and Bruce's report that he had a beer with supper. As the dissent notes, the notion that Bruce's odor of alcohol at the arrest scene evidenced his lack of sobriety does not square with the officer's handing the keys to the defendant's car to Bruce, an act that the trial court assumed the officer would not have performed had he deemed Bruce appreciably impaired. And the reliance upon Bruce's statement that he had a beer with supper (an event that generally occurs hours before 11:00 p.m.) seems too slender a reed for support. While acknowledging Bruce's testimony that he was denied access based upon his gender, the court of appeals determined that the trial court had resolved this conflicting evidence and that it was not its province to disturb that determination.

Next, the court of appeals noted that the trial court in *Knoll* found violations of G.S. 15A-511(b), -533(b), and -534(c), whereas the defendant in *Daniel* alleged violation solely of G.S. 15A-534.2(c), which provides that a defendant detained because her impairment presents a danger if she is released of damage to persons or property must be released when a judicial official determines that a sober, responsible adult is willing and able to assume responsibility for her until she is no longer impaired. Despite its characterization of the defendant's extensive detention as "inexcusable," the majority wriggled its way out of finding a statutory violation, reasoning that the magistrate wasn't required to release Daniel because she determined that Bruce was not sober. Surely, however, it is an abuse of discretion, and, thus a statutory violation, for a magistrate to conclude that a person is not sober and thereby deny a defendant release, when there is no competent evidence to support that conclusion. Moreover, there seems no principled basis for concluding that a substantial violation of G.S. 15A-534.2 (which, curiously enough, was never mentioned in *Knoll*) is insufficiently serious when accompanied by irreparable prejudice to require dismissal.

Finally, the court of appeals upheld the trial court's conclusion that even if a statutory violation occurred, the defendant was not irreparably prejudiced, pointing out that Bruce met with the defendant shortly after her initial appearance. This conclusion suggests that affording a detained defendant access to witnesses in jail removes any prejudice that may be said to result from an unlawful detention.

As I noted earlier, Judge Elmore dissented from the majority opinion, finding no evidence in the record that Bruce was not deemed a sober, responsible adult. Judge Elmore further concluded that the

defendant was prejudiced by this violation, reasoning that the unlawful confinement in this case was akin to that deemed prejudicial in *Knoll*.

If the defendant exercises her appeal of right to the state supreme court, that court, assuming it finds a statutory violation, will have an opportunity to illuminate just what constitutes irreparable prejudice in such a case and, specifically, whether it is eviscerated by a jail house visit.

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