Pre-Trial Detention of Defendants In Impaired Driving Cases

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State v. Knoll, 322 N.C. 535 (1988)

- 3 cases from Wake County
- David Knoll
  - Stopped at 1:15 pm; 0.30 BAC at 2:31 p.m.
  - Magistrate set bond at $300, made no inquiries to determine relevant factors under GS 15A-534
  - Asked to call father; allowed to call at 5 p.m.
  - Magistrate told father Knoll could not be released until 11 p.m.

State v. Knoll, cont'd.

- Sampson Warren, Jr.
  - Stopped at 10 p.m.; BAC at 11 p.m. .025
  - Magistrate set $500 secured bond
  - Dr. Martin came to jail with cash at 11 p.m.
  - Magistrate told Martin that Warren could not be released until 6 a.m.
  - Mr. Lewis also went to jail with cash at 1 a.m. and was told that Warren could not be released until 6 a.m.
  - Warren released at 8 a.m. when Dr. Martin posted bond

State v. Knoll, cont'd.

- Bennie Hicks
  - Arrested at 12:45 p.m. in Knightdale
  - BAC of 0.18
  - Magistrate set $200 bond
  - Hicks had $2,000 in cash with him, but not allowed to post bond
  - Hicks allowed to call wife at their home in Wendell at 1:30 a.m., but she had no car
  - Hicks released at 6 a.m. next morning

State v. Knoll, cont'd.

- All 3 defendants were polite and cooperative
- No clear and convincing evidence in any of the cases that if the defendant were released he would create a threat of physical injury to himself or others or of damage to property
- In all 3 cases, magistrate failed to inform the defendants of the circumstances under which they could secure pretrial release.
- In all 3 cases, magistrate failed to determine conditions of pretrial release in accordance with GS 15A-534.

State v. Knoll, cont'd.

- Denial of access is not automatically prejudicial to a defendant charged under G.S. 20-138.1(a)(2), the "per se" prong of impaired driving
  - State v. Hill, 277 N.C. 547 (1971), rule of ***automatically*** finding prejudice upon denial of constitutional and statutory right to communicate with counsel and friends does not apply in DWI cases based on per se BACs
- But court concludes that Knoll, Warren, &Hicks each made a sufficient showing of a substantial statutory violation and of prejudice
  - Each defendant's confinement came during the crucial period in which he could have gathered evidence in his behalf by having friends and family observe him and form opinions as to his condition following arrest
  - Opportunity to gather evidence and prepare a defense lost to each defendant because of the magistrate's failure to advise the defendants of their rights and because of their commitment to jail
- Cases remanded for reinstatement of dismissals ordered by trial court

State v. Bumgarner, 97 N.C. App. 567 (1990)

- Defendant arrested after bad driving, poor performance on FSTs
- Registered a 0.14 BAC
- D asked for an additional test
- Trooper gave D number for hospital and access to phone and phone book
- Hospital told D that it could do test if he was transported to hospital or if someone at the jail would withdraw blood
  - No one helped D with his request to withdraw blood
  - Former GS 20-16.2 provided that "any law enforcement officer having in his charge any person who has submitted to a chemical analysis must assist the person in contacting someone to administer the additional testing or to withdraw blood, and must allow access to the person for that purpose."
  - GS 20-16.2(a)(5) now provides: "After you are released, you may seek your own test in addition to this test."

State v. Bumgarner, cont'd

- Magistrate set bond at $400
  - Detained D until 11 a.m., unless released to a sober, responsible adult
- D called two hospitals and an attorney
- D did not call a sober, responsible adult to secure his release
- Secured bond and order of commitment later stricken and defendant released at 9 a.m.

State v. Bumgarner, cont'd

- Defendant moved to dismiss charges based upon
  - Violation of right to assistance in obtaining additional chemical test, and
  - Violation of constitutional right to secure witnesses by reason of the pretrial restrictions imposed by the magistrate
- Court finds no violation
  - Even under former GS 20-16.2, LEOs only required to allow D access to phone and allowing medical personnel access to D
  - Pretrial restriction authorized under GS 15A-534.2(c).
    - Magistrate based her decision on trooper's testimony, personal observations, and BAC.
    - Plus Defendant did not call any witnesses other than attorney

State v. Eliason, 100 N.C. App. 313 (1990)

- D arrested for DWI
- BAC 0.14
- D had bond forfeiture arising from 1973 DWI in SC
- D appeared before magistrate. Magistrate informed of BAC, previous conviction and bond forfeiture
- Magistrate asked about defendant's residence and employment.
- Magistrate told D of charges, right to communicate with counsel and friends, and that release was conditioned on posting of $300 secured bond
- D asked to call wife; Magistrate said he had to wait until he was taken to jail
- Wife arrived shortly thereafter to post bond. Defendant released after approx. 3 hours.
- D moved to dismiss b/c magistrate failed to make required inquiries

State v. Eliason, 100 N.C. App. 313 (1990)

- Court found that magistrate had information regarding
  - Nature of offense
  - Weight of evidence
  - Defendant's employment
  - Residence
  - BAC
  - Criminal record
  - Bond forfeiture
- Magistrate failed to inquire about
  - Defendant's character and mental condition
  - Financial resources
  - Length of residence in community and family ties
- No substantial statutory violation that warrants dismissal of charges based on failure to inquire into every individual factor given all other information before magistrate
- Defendant not denied access to anyone
- Allowed to call attorney and allowed to call wife a few minutes after leaving magistrate's office

State v. Ham, 105 N.C. App. 658 (1992)

- Ham, a Michigan resident, charged with DWI in Greensboro (1:35 a.m.)
- BAC 0.22
- Magistrate set secured bond of $300, which would be reduced to $100 if a sober, responsible adult with a valid DL was willing to assume custody
- Magistrate also stated D could be released at 9 a.m. under $100 bond
- Ham called friend around 4 a.m. and left message saying that bond was $300 and would be reduced to $100 at 9 a.m. and asking his friend to come get him
- Friend received message at some point, not sure when
  - Called magistrate and received same information
  - Did not have $300 on him so did not go to jail until 9 a.m.
- At 9 a.m., Ham requested release because he had $100 in cash
  - Jailer refused to release Ham until friend assumed custody (at 10 am)

State v. Ham, 105 N.C. App. 658 (1992)

- Ham moved to dismiss charges on basis that he was denied access to witnesses
- Ct: Must show a substantial statutory violation and prejudice
- State v. Dietz, 289 N.C. 488 (1976): D must show that lost evidence or testimony would have been helpful to his defense, that the evidence would have been significant, and that the evidence or testimony was lost
- Ham created confusion with friend regarding conditions for release
- Record silent as to when friend received message
- Ham failed to show he was prejudiced during crucial period (since intoxication does not last)

State v. Haas, 131 N.C. App. 113 (1998)

- D alleged magistrate violated statutory rights by failing to consider character, mental condition and prior history
- Magistrate set $500 bond based in part on D's residence outside the county
  - Court says this is justified
- Even if the magistrate had inquired into every factor and found them all in D's favor, this would not have mandated a departure from $500 bond requirement
- Therefore, defendant cannot demonstrate that he was prejudiced by magistrate's failure to consider every factor

State v. Lewis, 147 N.C. App. 274 (2001)

- D arrested for DWI, taken to detention center, signed notice of rights at 12:20 a.m.
- Began to make calls 29 minutes into 30 min delay before intoxilyzer administered
  - Then attempted to call Fraternal Order of Police
  - Asked for his wallet, which had local telephone numbers, but was not given his wallet
- Refused intoxilyzer
- Magistrate informed D of right to communicate with counsel, family and friends
- D did not ask magistrate for wallet
- Wallet and personal effects taken when he was brought into detention center; placed in a holding cell; but not given wallet with local telephone numbers

State v. Lewis, 147 N.C. App. 274 (2001)

- When a D alleges denial of right to communicate with counsel and friends, trial court must conduct hearing and make findings and conclusions
- Std of review: Is there competent evidence to support findings and conclusions?
- Trial court found that D was informed of rights and failed to exercise them
- The findings support the conclusions of law
- Thus, trial court did not err in denying motion to dismiss

State v. Labinski, 654 S.E.2d 740 (N.C. App. 2008)

- D arrested for DWI on July 21, 2005 and taken to Pitt County Detention Center for intoxilyzer
- D had cell phone in patrol car; text messaged friend, Anderson, to tell him she was in trouble
- BAC .08 (3 a.m.)
- D's friends arrived at PCDC at 3 a.m.
- D saw them when she walked from intox room to magistrate's office, but did not ask to speak to them; they did not ask to speak to her
- Magistrate set $500 secured bond and conditioned release upon release to sober, responsible adult or when BAC was 0.05 or at 9 a.m.
- Magistrate did not make inquiry into factors under GS 15A-534(c)

State v. Labinski, 654 S.E.2d 740 (2008)

- D taken to PCDC; booked at 3:47 a.m.
- D used 1-800-COLLECT to call father in NJ
- Officer brought cell phone to D so she could get other #s
- D called 3 friends who were already at PCDC
- D did not call bail bondsman or ask friends to
- A bondsman ultimately posted bond and D was released at 5 a.m. to one of the friends who had been waiting at PCDC
- D filed motion to dismiss based on Knoll

State v. Labinski, 654 S.E.2d 740 (2008)

- D contended that magistrate ordered detention without considering whether she was so intoxicated she posed a danger to herself and others
- Also contended magistrate required a secured bond without making findings required by GS 15A-534(c)
- And that these failures resulted in loss of evidence

State v. Labinski, 654 S.E.2d 740 (2008)

- No evidence that D presented danger to herself or others or that the magistrate was of the opinion that D did
- Court finds that magistrate substantially violated D's right to pretrial release
- But no irreparable prejudice
  - D did not lose opportunity to gather evidence in her behalf by having friends and family observe her and form opinions as to her condition following arrest and to prepare a case in her defense
- D's friends were at PCDC; D did not ask to see them

What now?

- No cases decided after enactment of GS 20-38.4
  - "If there is a finding of probable cause [for an offense involving impaired driving], the magistrate shall consider whether the person is impaired to the extent that the provisions of G.S. 15A-534.2 should be imposed."
- AOC-CR-270