



# IMPAIRED DRIVER HOLDS AND VEHICLE SEIZURES

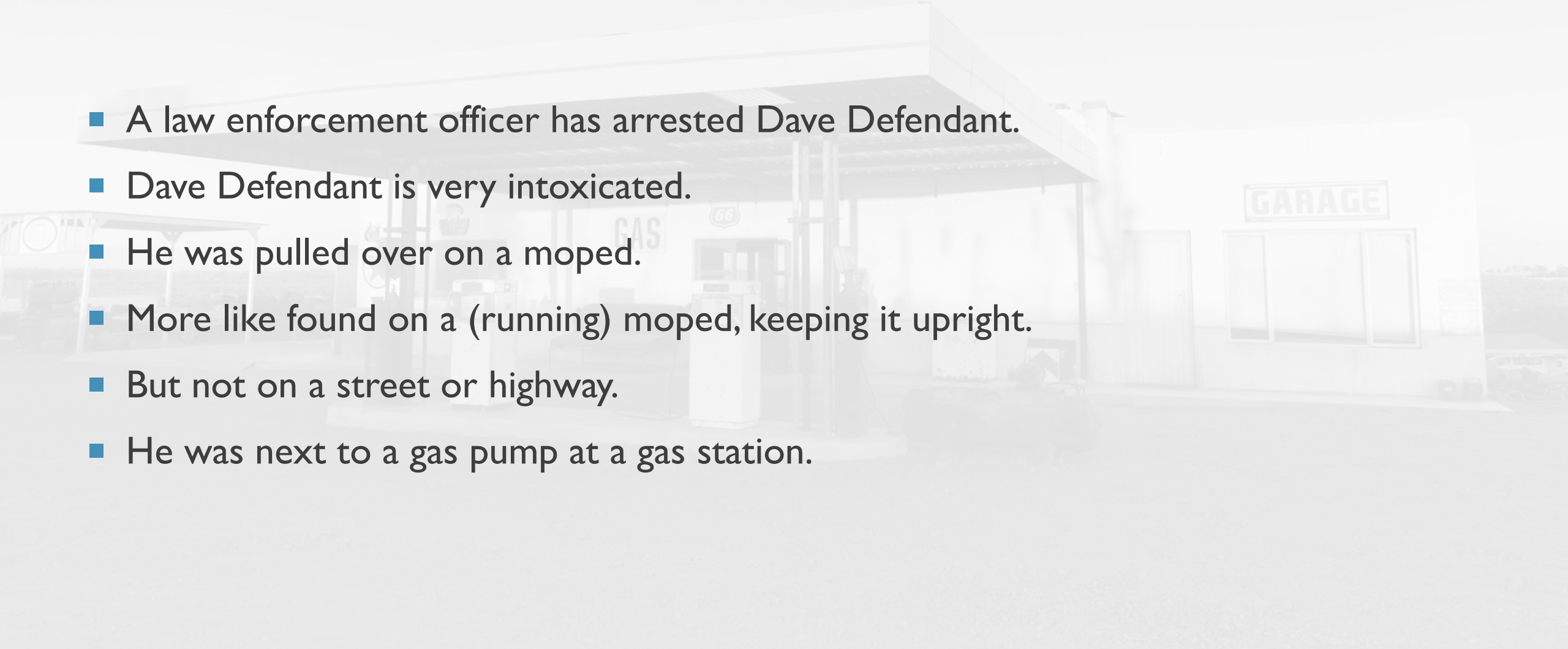
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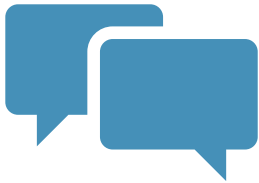
ONE DAY CRIMINAL LAW SEMINAR FOR MAGISTRATES 2025

# A HYPOTHETICAL

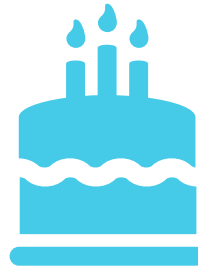
- A law enforcement officer has arrested Dave Defendant.
- Dave Defendant is very intoxicated.
- He was pulled over on a moped.
- More like found on a (running) moped, keeping it upright.
- But not on a street or highway.
- He was next to a gas pump at a gas station.



## DURING THE INITIAL APPEARANCE



You're able to have a conversation with Dave. He appears to understand and accept what's going on.



His BAC is .30



Can you impose an impaired driver hold pursuant to G.S. 15A-534.2?

## I5A-534.2

- Subsection (b)
  - “If at the time of the initial appearance the judicial official finds by clear and convincing evidence that the impairment of the defendant's physical or mental faculties presents a danger, if he is released, of physical injury to himself or others or damage to property, the judicial official must order that the defendant be held in custody and inform the defendant that he will be held in custody until ...”

# IMPAIRED DRIVER HOLDS

*State v. Labinski*, 188 N.C.App. 120 (2008)

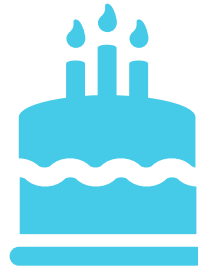
- Finding of Fact 17. That based on Magistrate Knox's opinion that anyone charged with driving while impaired who blows a .08 or above on the Intoxilyzer 5000 would possibly hurt himself or someone else, Magistrate Knox set the Defendant's bond at \$500 secured. In addition, Defendant's release was conditioned upon release to a sober adult, release when Defendant had an alcohol concentration of .05, or release at 9:00 a.m. on July 21, 2005.
- “Magistrate Knox did not testify to any concern at all about defendant hurting herself or anyone else and he stated that she was polite and cooperative. He did not testify to any opinion regarding the behavior of defendant or any other person based upon a particular blood alcohol concentration alone. The release order also contains no indication that defendant presented a danger to herself or others. There is no evidence in the record to support the finding that Magistrate Knox was of the opinion that defendant “would possibly harm herself or someone else.”

Without specific findings reflecting the requirements of G.S. 15A-534.2, the court found the defendant's statutory rights were substantially violated.

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# BACK TO THE INITIAL APPEARANCE

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- Slight change.
  - He understands what you're telling him, but he doesn't like it.
  - He knows what's happening, but he's sure he shouldn't have been charged.
  - He was stopped, at a gas pump, on private property.
  - He doesn't even feel that drunk.
  - He also has a job, no prior record, and has ties to the community.

# SETTING PRETRIAL RELEASE CONDITIONS

- Nothing stopping you from conducting the initial appearance (we already covered delays in the previous presentation).
- Set pretrial conditions like you otherwise would.
  - Second part of subsection (b)
    - “provided, however, that the judicial official must at this time determine the appropriate conditions of pretrial release in accordance with G.S. 15A-534.”
- Now it's time to consider the impaired driver hold.
- What might make you want to impose the impaired driver hold?
- Remember Labinski.



## ONE MORE THING



THERE'S ALWAYS SOMETHING  
ELSE.



HE DIDN'T HAVE A DRIVER'S  
LICENSE, AND NO  
INSURANCE.



WHAT NOW?

# MOTOR VEHICLE SEIZURES

Two circumstances for motor vehicle seizure pursuant to G.S. 20-28.3

- Either the defendant's license was revoked for an impaired driving revocation, or
- They did not have a valid driver's license and were not insured to drive.

The motor vehicle shall be seized by law enforcement. And if not, and you learn the motor vehicle is subject to seizure, you shall order it seized and impounded.

- The seizure is mandatory
- Regardless of vehicle value

# DEFINITIONS



Driving while impaired may be committed using any vehicle (as defined by G.S. 20-4.01). Mopeds are vehicles, and arguably would be motor vehicles, except:



The statute specifically excludes mopeds from the definition of motor vehicle

Every vehicle which is self-propelled and every vehicle designed to run upon the highways which is pulled by a self-propelled vehicle. Except as specifically provided otherwise, this term shall not include mopeds or electric assisted bicycles.



And G.S. 20-28.3 authorizes the seizure of...

# DEFINITIONS

**§ 20-28.3. Seizure, impoundment, forfeiture of motor vehicles for offenses involving impaired driving while license revoked or without license and insurance, and for felony speeding to elude arrest.**

(a) **Motor Vehicles Subject to Seizure for Impaired Driving Offenses.** – A motor vehicle that is driven by a person who is charged with an offense involving impaired driving is subject to seizure if:

- (1) At the time of the violation, the drivers license of the person driving the motor vehicle was revoked as a result of a prior impaired driving license revocation as defined in G.S. 20-28.2(a); or
- (2) At the time of the violation:
  - a. The person was driving without a valid drivers license, and
  - b. The driver was not covered by an automobile liability policy.

## PROPERTY SEIZURE GENERALLY

Property may be seized if it is, or contains, evidence of a crime.

Custody and release of the property are governed by G.S. 15-11.1.

Not a forfeiture proceeding: once the criminal proceedings have terminated, the general rule is that seized property other than contraband should be returned to its rightful owner.

Are you seeing this in impaired driving cases?

## COMPLETING THE INITIAL APPEARANCE

You ended up giving Dave a \$500 secured bond.

While you were talking with him, you realized an impaired driver hold wasn't necessary, he cooled down during your conversation.

He says he'll have no problem posting the bond, and you believe him.

Do you have to give him an Implied Consent Offense Notice?

# NEW STEP IN INITIAL APPEARANCES FOR DWI OFFENSES

- G.S. 15A-534(d4) includes “any offense involving impaired driving as defined in G.S. 20-4.01” as a triggering offense for determining whether the arrested person is a legal resident or citizen of the United States.”
- What offenses does that include?
  - Impaired driving
  - Any offense under G.S. 20-141.4 when the offense is based on impaired driving
  - First or second degree murder or involuntary manslaughter when the offense is based on impaired driving
  - Impaired driving in a commercial vehicle
  - Habitual impaired driving
  - Offenses committed in another jurisdiction that prohibit substantially similar conduct

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# IMPLIED CONSENT OFFENSE NOTICE

## § 20-38.4. Initial appearance.

(a) Appearance Before a Magistrate. – Except as modified in this Article, a magistrate shall follow the procedures set forth in Article 24 of Chapter 15A of the General Statutes.

- (1) A magistrate may hold an initial appearance at any place within the county and shall, to the extent practicable, be available at locations other than the courthouse when it will expedite the initial appearance.
- (2) In determining whether there is probable cause to believe a person is impaired, the magistrate may review all alcohol screening tests, chemical analyses, receive testimony from any law enforcement officer concerning impairment and the circumstances of the arrest, and observe the person arrested.
- (3) If there is a finding of probable cause, the magistrate shall consider whether the person is impaired to the extent that the provisions of G.S. 15A-534.2 should be imposed.
- (4) The magistrate shall also:
  - a. Inform the person in writing of the established procedure to have others appear at the jail to observe his condition or to administer an additional chemical analysis if the person is unable to make bond; and
  - b. Require the person who is unable to make bond to list all persons he wishes to contact and telephone numbers on a form that sets forth the procedure for contacting the persons listed. A copy of this form shall be filed with the case file.

(b) The Administrative Office of the Courts shall adopt forms to implement this Article.  
(2006-253, s. 5.)

## IMPLIED CONSENT OFFENSE NOTICE

- Best practice: unless you're practically walking them out the door, give them an implied consent offense notice and a copy of the procedure for contacting witnesses.

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# QUESTIONS?

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