

Drunks Drive The Best Cars

July 18, 2008

Volume 7, Number 2

A Look At DWI Vehicle Seizures

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Once upon a time, our esteemed legislators in Raleigh climbed to the top of the capitol building¹ and surveyed this great State over which they ruled. All was right in the land (this was before \$4 gas) and they wondered what they would do to pass the remaining days they had in session. "Perhaps we should give law enforcement officers more money and a generous raise to State employees," one suggested. "That would be okay, I guess," answered another, "but why don't we get into the used car business instead?" Excited about living the dream, these patriots got right to work determining how they could seize automobiles from that upper-class segment of society called "the drunks."

When I was a prosecutor in Durham, I was tasked with the job of handling the very first DWI seizures and forfeitures. Apparently, I had done something to REALLY tick off the boss. Back then, this legislation was so well written that everybody knew that vehicles could be seized, but there was no process in place to hold them, sell them, scrap them, or have Vinny strip them for parts. The result was that the local school boards were now the proud caretakers of sometimes hundreds of vehicles in various states of disrepair. And who says our friends in Raleigh don't care about the school system?

The law has been modified now and for the most part a lot of those early shortcomings have been corrected. But sometimes it can get complicated to apply when out in the field. Let's look at the law of DWI vehicle seizures...

When Can I Seize A Vehicle For DWI?

There are two situations where a motor vehicle is subject to forfeiture under the DWI laws: (N.C.G.S. 20-28.3)

1. Driver charged with an "offense involving impaired driving" AND his license is revoked for an "impaired driving license revocation." OR
2. Driver charged with an "offense involving impaired driving" AND he is driving without a valid driver's license (NOL/DWLR) AND driver is not covered by automobile liability insurance.

¹ The phrase "capitol building" is redundant. I swear. Look it up yourself.

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An astute observer will notice three things almost immediately. First, we need a definition of “offense involving impaired driving.” Second, we need a definition for “impaired driving license revocation.” Third, your legal advisor knows where both the quotation mark key and the caps lock key are located on the keyboard.

Offenses Involving Impaired Driving (N.C.G.S. 20-4.01(24a))

1. DWI – 20-138.1
2. Death by vehicle, Serious Injury by vehicle – 20-141.4
3. Murder or manslaughter when based on DWI
4. Substantially similar offense out of state
5. Substantially similar offense repealed or superseded (covers old DWI laws)
6. DWI in commercial vehicle – 20-138.2
7. Habitual DWI – 20-138.5

Impaired Driving License Revocation (N.C.G.S. 20-28.2(a))

Revocations pursuant to one of the following:

1. Driving after consuming while under 21 or refusal to blow for that offense
2. DWI on military base (revocation under 20-16(a)(8b))
3. Refusal (20-16.2)
4. A blow of .08 in regular vehicle or .04 in commercial vehicle
5. Conviction of DWI
6. Conviction of Commercial DWI with BAC of .06 or more
7. Two or more convictions for transporting an open container
8. Conviction of Habitual DWI
9. Substantially similar conviction out-of-state involving impaired driving
10. Vehicular manslaughter involving impaired driving
11. Any felony involving motor vehicle and impaired driving
12. Death by vehicle, serious injury by vehicle involving impaired driving
13. Assault with motor vehicle involving impaired driving

Remember, the driver you are charging with an “offense involving impaired driving” has to be currently revoked for one of the above “impaired driving license revocations” to proceed with seizure under situation #1 above. If he is driving without a valid license for any other reason, you may only seize the vehicle if he is not covered by an automobile liability insurance policy.

One final caveat: even if the driver meets the criteria above, you may not seize the vehicle if:

1. It has been reported stolen, OR
2. It is a rental vehicle and the driver is not on the rental agreement.

What Do I Do Now?

If your driver meets the above criteria, you shall seize the vehicle and have it impounded. You then present to the magistrate an affidavit of impoundment (AOC form CR-323). This form also has a note to you on it that reads as follows:

“The seizing officer shall notify the Division of Motor Vehicles (DMV) of the seizure as soon as practical, but not later than 24 hours after the seizure of the motor vehicle. G.S. 20-28.3(b). The seizing officer should complete form ENF-176 and forward it to the officer's DCI terminal operator. The terminal operator will then transmit the information to DMV via DCI.”

Follow those simple instructions and you have successfully seized a luxurious vehicle for the great State of North Carolina. Congratulations!

If for some reason you haven't seized the vehicle prior to presenting the affidavit of impoundment to the magistrate, his or her signature authorizes you to seize the vehicle at that time. You may go onto the property of the defendant (using reasonable force) to retrieve the vehicle, but you need to get a search warrant to go on the property of a third party to get the car.

USELESS FACT OF THE WEEK – I often run across some interesting but useless tidbits of information while researching. As a prize for those who actually read this whole bulletin, here is your useless fact of the week.

When the legislature revised the DWI laws in 2006, they took out the exception that made it perfectly legal to operate a lawnmower or bicycle under the influence. But 20-138.1(e) still makes it clear that one may ride a horse while subject to an impairing substance. So if I'm not in my office when you stop by, there's a good chance I'm working on opening a saloon with a horse trough and hitching posts out front. I'm going to make a fortune! Yee-hah!



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