



Dean's Message



Virginia Landry

To My Esteemed Colleagues, hope you are having an extraordinary day!
2023 and 2024 will see some exciting changes for the College. Working behind the scenes with our Regents and Fellows, along with the capable guidance of our Executive Director, Rhea Kirk, and her Assistant, Hunter Shepherd, we have formalized an exciting year of seminars for YOU! Get your calendars out/open as there are scheduled events you will not want to miss!

Hopefully we saw each other at the NCDD/NACDL Las Vegas seminar, Defend With Ingenuity. New and returning speakers provided us with lots of interesting "How To" demonstrations and offered encouragement and guidance in navigating the ever changing field of DUI/DWI Defense. Mark your calendars now for September 18-21, 2024, for the 28th Las Vegas, Nevada convention. It is sure to be remarkable! If you've been wanting to take the Board Certification Examination, yes the NCDD is the one and only American Bar Association sanctioned entity to bestow the distinction of "Board Certified in DUI Defense Law" through the examination process scheduled for September 17, 2024. Applications are due March 29th so be sure to start working on them now! More information is found on line at www.ncdd.com/board-certification.

Winter Session will be held at the beautiful Lowes Resort in Atlanta, Georgia on January 18-19, 2024. Lessons From Legends Part One: Breathe Life Into Your Case will focus entirely on trial scenarios for a breath testing case. There will be breakout sessions to take the materials taught in the lectures and put the practical applications to use in workshops with your attorney family. Learning experiences along with trying new approaches. Come and play with some breath testing machines during our wet lab and get excited with new information!

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E.D.'S Corner



Rhea Kirk

It's hard to believe that 2023 is coming to a close! Well-bring on 2024 with a bang and attend Dean Virginia Landry's amazing Winter Session January 18 & 19. "Lessons from Legends Part One!" I hope you are making plans to attend because, not only will you learn a great deal, but you will also enjoy getting to know Midtown Atlanta and visiting with your fellow attendees.
This will be a very informative seminar!!

Our upcoming seminars:

- Mastering Scientific Evidence (MSE) - New Orleans March 21-23
- Summer Session - Newport Beach, CA July 11-13
- Serious Science-Drugs - Arlington, TX Aug 9-14
- Vegas Defending with Ingenuity Las Vegas, NV Sept 19-21

...and we are working on some surprises in between!!

Please visit the NCDD Website www.ncdd.com for more details for our upcoming events or call the NCDD Office 334-264-1950 for more information.

Don't forget to update your bio on the Website and include your picture!! We are getting a lot of traffic which is potential business for YOU! Watch for our NCDD Website REFRESH!! It will be better than ever!

I hope you all have a safe, healthy and happy Holiday! I look forward to seeing you at one of our NCDD seminars soon!

WINTER SESSION

Atlanta, GA
JANUARY 18-19, 2024
REGISTER NOW!
WWW.NCDD.COM

SAVE THE DATES!

SUMMER SESSION

Newport Beach, CA
JULY 11-13, 2024
REGISTER NOW!
WWW.NCDD.COM

MASTERING SCIENTIFIC EVIDENCE

New Orleans, LA
MARCH 21-22, 2024
REGISTER NOW!
WWW.NCDD.COM

SERIOUS SCIENCE: ADVANCED COURT IN BLOOD DRUG ANALYSIS AND TRIAL ADVOCACY

Arlington, TX
AUGUST 9-14, 2024
VISIT: WWW.NCDD.COM FOR MORE INFORMATION

(Continued from cover - "Dean's Message")

Our NHTSA SFST Student Course will be held in sunny California on February 8-10, 2024 in Irvine. With a smaller focused group, you will hear about the training that is supposed to be done and the specifics of what officers are taught so that you will be equipped to dissect all the parts that were not done correctly for your trials and motions. Everyone feels so much more prepared for trial after attending this course that it sells out each time. Get your registration in soon or you risk being put on the waiting list!

Mastering Scientific Evidence will return to New Orleans on March 21 and 22, 2024, featuring not just science, but also successful and proven trial strategies in challenging the pseudo-scientific evidence. Come for the food, meet new friends and figure out what jurors really find important as you can watch a mock trial with video footage of deliberations on day two after lectures on day one. Always an adventure!

Due to social unrest on many colleges across the nation as this newsletter is going to print, we regret that the time is not appropriate for us to return in the Summer of 2024 to Harvard University. Please know that our flagship Summer Session, while we are finalizing location and fun, will surely be one of the biggest and best had in years as Lessons From Legends Part Two will be announced shortly. Not only will there be a lineup you will enjoy, but so many fun things to do in the area that you will want to tag on an extra day to play in the sun, at the beach (teaser) and with your new friends. Workshops will teach you, and the wonderful social scene will wow you!

Serious Science: Advanced Course in Blood Drug Analysis and Trial Advocacy in Arlington, Texas on August 9-14, 2024, another small program with individual one on one training, will surely impress you. The faculty is outstanding and the learning exponential! It is truly one of a kind training.

Registration and further information about our upcoming three to four scheduled seminars are found at www.ncdd.com/sessions-seminars. Rhea Kirk always negotiates great room rates for us so sign up before the room blocks fill up for the most cost-effective way to attend.

Did you know that our motto is "Justice Through Knowledge" and we dedicate our year to you, the members. Really, we exist to educate and elevate you in your practice of law. We want you to be proud of your accomplishments. We want you to be the best version of you possible, both professionally and personally. We foster the "after seminar" conversations, coffee and/or cocktails with each of you investing your time and money in our educational programs. We want to know what you would like further training on. Are you, or do you know a great speaker that we can put on our agenda? Have you thought of becoming more involved in NCDD? Are you studying for Board Certification? Would you like to join us on a Task Force? Can you share a blog with us or write a 3500-word article? We are always looking for new faces eager to help us maintain our excellence in education. Can you help us?

In order to foster change and elevate our practices, we have to continually train. Like the athlete who devotes time and attention to the sport, we train our mind, our skills and our presentations. We become trial warriors and trusted alliances. We support you. In and out of the courtroom!

I know that seeing friends and learning from the collective wisdom of this group has made me a much more effective attorney. It is with honor and humility that I am here to deliver a fun and fantastic learning experience. We are invested in your future success. Come spend some time with us and let's make everyone be extraordinary!



Case Law Update By Flem Whited III

APPEALS

State v. Spencer, 2023 WL 3302171 (Tenn.Crim.App.)

Issue on appeal regarding admission of blood sample not preserved for review where different theory was offered at trial.

ARREST

Wagner v. State, 361 So.3d 388 (Fla. 4th DCA 2023)

Arresting officer could not rely on public safety aide's investigation to establish probable cause to arrest defendant; State statute required for lawful arrest officer must witness all elements of the offense in his presence.

People v. Gilliland, 78 Misc.3d 1201A (unreported)

Simply establishing that a person drank some unknown quantity of alcohol and then drove a car—without any indication of impairment—does not itself establish probable cause to arrest.

State v. Vonschrader, 986 N.W.2d 563 (Wis.App. 2023)

Defendant illegally seized inside his home when officers yelled for him to come out at gun point; Seizure was without probable cause; Exclusionary Rule properly applied.

BLOOD TESTS

State v. Simpson, 2023 WL 5861587 (Ohio App.)

Ohio Appellate Court says original warrant to "seize" blood allowed the "search" of the blood.

State v. Rogers, 2023 WL 5091872 (Ohio App.)

Another Appellate Court in Ohio says need warrant to get hospital medical records.

State v. Burtrum, 530 P.3d 68 (Okla.Crim.App.)

Defendant did not freely and voluntarily consent to blood test where LEO told him he did not have the right to refuse based on state statute.

State v. German, 2023 WL 2778510 (S.C.) (not reported)

Supreme Court of South Carolina holds statutory implied consent is not a substitute for actual consent; Warrantless blood draw pursuant to statutory implied consent unconstitutional.

BREATH TESTS

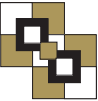
State v. Hernandez, 2023 WL 4499900 (Tex.App.Corpus Christi-Edinburg) (not reported)

Defendant initially consent to the breath test but later asked the trooper what would happen if changed his mind; The trooper told him that he would "have to go by" Hernandez's earlier consent; The Court held that was a misstatement of the law at best, and deceptive or intentionally dishonest at worst, as this statement indicated that Hernandez lost the opportunity to refuse or withdraw his consent.

State v. Pacheco, 2023 WL 3745204 (N.M.App.) (not reported)

Change in regulation relating to number of samples after adverse appellate decision still does not allow single usable test result into evidence.

Continued...



COLLATERAL ESTOPPEL

Schaefer v. Superior Court, 2023 WL 4144832 (Cal.App.) (not reported)

Collateral Estoppel precludes trial for DUI UBAL causing injury where jury hung on that count but found Defendant Not Guilty of DUI (impairment) causing injury.

CONFRONTATION CLAUSE

Bell v. State, 2023 WL 5949445 (Tex.App. Beaumont) (not reported)

No error in not allowing toxicology report from NMS Labs showing deceased BAC through the medical examiner; medical Examiner unable to give testimony regarding the reliability of the test result; Defendant's claim of failure to give a "concurrent causation" jury instruction not preserved and did not rise to the level of fundamental error. Implied Consent

State v. White, 2023 WL 4381573 (Vt.)

The blood analyst report that states the blood sample was analyzed by gas chromatography and provides the results of the blood-alcohol analysis, but says nothing about whether the analysis was "performed according to a method or methods approved by the Department of Public Safety" is insufficient to lay the proper predicate to introduce the blood alcohol result.

CONTINUED DETENTION

State v. Rodriguez, 2023 WL 3161880 (Minn.App.) (not reported)

Insufficient evidence to support continued detention of driver where two officers had concluded that driver was not impaired by alcohol but extended the detention while waiting on the drug dog.

DRUGS

State v. Trout, 2022 WL 17957342 (Minn.App.) (not reported)

Conviction reversed where the State failed to establish a temporal link between Trott's driving and the presence of methamphetamine. *People v. Rehbock, 2023 WL 4285037 (Ill.App.) (not reported)* Defendant's reliance on lab report from the State that showed the potential "margin of error" of the blood test which was 17.85% was sufficient to establish the inaccuracy of the results; This meant that the value of the THC concentration in defendant's blood, to an extremely high degree of confidence (99.73%), was somewhere within the range of 4.6 to 6.6 nanograms of THC per milliliter of whole blood.

People v. Monday, 2023 WL 4234820 (Ill.App.) (not reported)

Insufficient evidence to support conviction of DUI-drugs where officer was not a DRE and Defendant did not admit to consuming the drug involved.

IMPLIED CONSENT

Jansma v. Colorado Department of Revenue, 536 P.3d 859 (Colo.App. 2023)

Bare assertion by a law enforcement officer, made by checking boxes in a form affidavit, that a driver refused a chemical testing request does not provide sufficient evidence to support the Department of Revenue revoking a driver's license under section 42-2-126(3)(c), C.R.S. 2022.

Nash v. Commissioner of Public Safety, 989 N.W.2d 705 (Minn.App. 2023)

Driver being told that failure to submit to "a blood test" rather than "a blood or urine test" could be a crime results in rescission of the administrative suspension for having the presence of a controlled substance in the blood sample.

Frazier v. Burcker, 886 S.E.2d 356 (W.Va. 2023)

The OAH did not err in refusing to give weight to a diagnostic blood test results contained in the driver's medical records; No evidence that the test met the criteria of West Virginia Code of State Rules s. 64-10-8.

MEDICAL RECORDS

State v. Rogers, 2023 WL 5091872 (Ohio App.)

Another Appellate Court in Ohio says need warrant to get hospital medical records.

MIRANDA

State v. Navarette, 2023 WL 4963251 (N.M.App.) (not reported)

Defendant was placed in locked patrol vehicle at the scene of fatal crash for at least one hour prior to prearrest questioning was "in custody" thus requiring Miranda warnings.

State v. Hewitt, 526 P.3d 558 (Hawaii 2023)

Defendant was "in custody" for Miranda purposes when asked, while in hospital bed, about driving by officers who responded to call about possible assault victim.

State v. Tiwana, 2023 WL 1806779 (N.J. Super) (not reported)

Defendant was "in-custody" when three officers were questioning her while in the hospital after a crash; her Miranda rights were violated where when she appeared at the prosecutor's office the next day they continued to question her after she invoked her right to remain silent.

MOTOR VEHICLE

State v. Fork, 207 N.E.3d 56 (Ohio App. 2023)

Court finds that a "Polaris" does not come within the definition of a "motor vehicle".

NECESSITY DEFENSE

Coolbaugh v. State, 2023 WL 4769532 (Tex.App.-Austin) (not reported)

Verified evidence of domestic violence was sufficient to raise a Necessity Defense.

PER SE OFFENSE

State v. Reger, 2023 WL 2472980 (N.M.App.) (not reported)

State failed to present sufficient evidence to prove Defendant's BAC was above the legal limit within 3 hours of driving with BAC obtained 10 hours after driving.

PRIOR CONVICTION

Yemel'yamov v. Commonwealth, 881 S.E.2d 920 (Va.App. 2023)

Defendant's second DUI conviction was final, and thus qualified as predicate offense for purposes of convicting him of felony DUI, even though conviction was still pending on appeal.

People v. Morgan, 304 Cal.Rptr. 159 (Cal.App. 2023)

Appellate Court says only convictions for crimes listed in the statute could be used to enhance misdemeanor DUI to Felony DUI; No such thing as taking two prior convictions for other crimes not listed in the current statute "together" to qualify as equivalent to listed crimes.

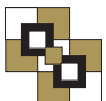
People v. Kembel, et. al., 524 P.3d 18 (Colo. 2023)

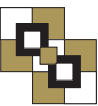
As a matter of first impression, trial court was not permitted to bifurcate prior-convictions element from remaining elements in jury trials for defendants' felony DUI charges.

State v. Brown, 2023 WL 5011101 (Minn.App.) (not reported)

Prior license revocation in Wisconsin, which followed an uncounseled OWI conviction, is not a "qualified prior driving incident" within the meaning of Minn. Stat. § 169A.24, subd. 1(1).

Continued...





State v. Joseph, 2023 WL 4419699 (La.App.) (not reported)

Felony DWI conviction reversed where one predicate conviction should not have been allowed; Although the minute entry for that conviction states that the Defendant was informed of and waived his Boykin rights, the Waiver of Rights form introduced into evidence is incomplete—with many provisions left blank and not initialed by relator, including the provision stating, “I desire to represent myself knowing that I could have an attorney if I desired one. I believe this plea is in my best interest and I recognize the dangers of representing myself.”

Vellon v. Commonwealth, Dep’t of Transp’t, BOD, 292 A.3d 882 (Pa. 2023)

Licensee’s second DUI offense was not to be considered a “prior offense” with regard to licensee’s first DUI offense when licensee was sentenced for both offenses on the same day.

State v. Clark, 990 N.W.2d 630 (Wis.App. 2023)

Wisconsin allows prior administrative suspension to count as a prior conviction because it is “a determination that a person has violated or failed to comply with the law in an authorized administrative tribunal”.

REASONABLE SUSPICION

State v. Williams, 293 A.3d 1185 (N.J. 2023)

New Jersey Supreme Court follows *Kansas v. Glover* and upholds stop of vehicle where mobile data terminal comes back that owner of vehicle’s driver’s license is suspended; But, Court says Defendant illegally detained where officer realized that driver was not the owner of the vehicle; Thought he smelled marijuana is not same as “plain smell” of marijuana sufficient to justify further detention.

People v. Jones, 2023 WL 3856424 (Ill.App.)

Appellate Court affirms Trial Court’s grant of subpoenas to ShotSpotter as information from that system was used by the police to stop the defendant; ShotSpotter, Inc. (Shotspotter), is a company that operates a gunfire detection and location system for the Chicago Police Department (CPD).

State v. Redding, 528 P.3d 314 (Or.App. 2023)

The Defendant was stopped for failure to signal a lane change after the lane in which she was driving widened to two lanes, and defendant failed to signal to indicate which of the two lanes she would use before moving her vehicle to the right and proceeding in the right lane; Court reverses conviction holding the Defendant did not violate the failure to signal lane change statute.

RECKLESS OPERATION

People v. Otto, 2023 WL 5987017 (Mich.App.)

Michigan Court finds Attorney for Defendant ineffective for failure to file Motion to Dismiss Reckless Driving causing homicide where the theory was the Defendant failed to maintain his vehicle and the breaks failed causing crash killing a child.

REFUSAL

Nelson v. North Dakota, Dept of Trans, 990 N.W.2d 587 (N.D. 2023)

Motorist’s refusal to submit to test following police officer’s partial implied consent warning could not form basis for revocation of driving privileges.

RESTITUTION

State v. Hensley, 206 N.E.3d 77 (OhioApp. 2023)

Insurance company is not a “victim” as that term is used in “Marsy’s Law”; Order for Defendant to pay amount insurance paid to the injured party reversed.

SEARCH AND SEIZURE

Nance v. State, 216 N.E.3d 464 (Ind.App. 2023)

Motion to Suppress should have been granted where officers tracked a marijuana odor to Defendant’s home, pulled him across the threshold of his home, forcibly detained him outside, and then entered his home without a warrant.

State v. Schubert, 219 N.E.3d 916 (Ohio 2023)

In a 4 to 3 decision, the Ohio Supreme Court rules the good-faith exception to the exclusionary rule does not apply to the execution of a constitutionally deficient search warrant authorizing the search of cell phones found at the scene of a car crash, when nothing in the affidavit supporting the warrant connected the phones to the crash other than the police officer’s averment that evidence of how the accident occurred “may” be found on the phones.

SENTENCING

People v. Ortiz, 2023 WL 4204592 (Ill.App.) (not reported)

Trial Court erred when it allowed into evidence at sentencing “victim impact” statements from six of the deceased friends; The Court held they were not “representatives” as contemplated by the victim impact law.

Coto v. State, 366 So.3d 1 (Fla.App. 2023)

Florida Court approves the use of “comparative fault” as a reason to downward depart from presumptive sentence.

People v. Woodside, 529 P.3d 1233 (Colo. 2023)

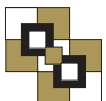
Colorado Supreme Court says offender may be sentenced as second offender even if that offense occurred prior in time.

SFSTs

State v. Ortiz, 528 P.3d 795 (Or.App. 2023)

The arresting officer testified at trial, without objection, that (1) the FSTs are “designed to determine impairment,” nationally “standardized,” and supported by studies “prov[ing] their validity” and (2) that defendant’s performance on the FSTs was consistent with intoxication and not with sobriety; The attorney for the Defendant did not object at trial to this evidence; thus, review was allowed under the “plain error” or “fundamental error” doctrine; The Defendant’s conviction was reversed. State failed to lay the predicate for scientific evidence.

Continued...





LEGENDARY PASSINGS

In Memoriam

NCDD Founder Lawrence “Larry” Taylor (1942 – 2023)

The NCDD community has had its share of heartbreaking losses over the years, but none more so than the passing of Larry Taylor last October. Lawrence Eric Taylor and his wife, Judy Strother Taylor, passed away together at their home in Naples, California. Judy had suffered greatly for several years with advanced Parkinson’s disease and their decision to leave the world together was the culmination of a 30-plus year romance. Both were incredibly accomplished in their respective fields.

Larry was a graduate of U.C. Berkeley (1966) and the UCLA School of Law (1969). He authored 12 books, including *Drunk Driving Defense* and *California Drunk Driving Defense*. A former Marine and deputy public defender, he went on to serve as the trial court’s legal adviser in the case of *People v. Charles Manson* and was counsel to the California Supreme Court in the *Union Field* murder case. He was retained by the Montana Attorney General in 1975 to conduct a one year probe into government corruption. He was voted “Professor of the Year” at Gonzaga University School of Law in 1983, was a Fulbright Professor of Law at Osaka University in Japan in 1985, and was a visiting professor at Pepperdine University School of Law. Larry lectured lawyers on DUI defense in some 38 states. He jointly founded NCDD and served as its NCDD Dean from 1995 to 1996.



LARRY TAYLOR

“Larry Taylor is why we all came together. Without him very few of us would have ever become the classic defenders we became. He worked with so many of us throughout the years.”

--- Doug Cowan

NCDD Founder and Past Dean

Judy Taylor was one of the founding members of the *Washington Free Press* newspaper. Her passion for helping children and cats was boundless. She worked at the White House Special Action Office for Drug Abuse and Prevention. She founded the non-profit *Pretty Good Cat* rescue organization in Los Angeles and La Quinta, California.

“We have lost one of our Founding members, outstanding lawyer and great friend.

“Larry and Judy have blessed us with their friendship and I imagine when they arrived at the pearly gates and were asked ‘how do you plead?’ I’ll bet Larry responded, ‘Ready!’”

--- Tommy Kirk

NCDD Founder and Past Dean

The couple is survived by Larry’s son, Christopher Taylor, who continues to manage the southern California law offices of Taylor & Taylor. “Through countless doctor appointments, hospital emergency room visits, and unending days and nights spent coping with her medical conditions, they never left each other’s side,” said Chris. “And that’s how their lives ended...by each other’s side.”

