

NEWS RELEASE

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Misdemeanor Appeals Team tries 4, convicts total of 35 defendants

CHARLOTTE, N.C. – Over the course of three weeks, the Mecklenburg County District Attorney's Misdemeanor Appeals Team tried four defendants and convicted a total of 35 defendants. About half of those defendants were convicted of driving while impaired charges. The proceedings were held February 10-28, 2014, in courtrooms 5130 and 5170 before The Honorable Julia Lynn Gullett, The Honorable Nathaniel J. Poovey and The Honorable Linwood O. Foust, Superior Court Judges. Court was closed February 12-14 due to inclement weather.

The Misdemeanor Appeals Team prosecutes cases in which the defendant was convicted in District Court and then appealed his or her conviction to Superior Court for a jury trial, as allowed under North Carolina law. Of the 35 defendants convicted, 16 were convicted of driving while impaired, and one was convicted of habitual driving while impaired. Others were convicted of charges such as simple assault, reckless driving and resisting a public officer. Four of the defendants were convicted at trial, while 31 others were convicted when they pled guilty or remanded their cases to District Court for sentencing.

During the three-week term, prosecutors made arguments in two cases appealed by the State after a District Court Judge previously ruled in favor of the defendant on a matter of law. In both cases, a Superior Court Judge reversed the District Court Judge's decision. The Misdemeanor Appeals Team also assisted in calling a felony case involving a driving while impaired charge to trial, and the defendant ultimately decided to plead guilty as charged.

The following four defendants were tried and convicted:

Joseph Dickson, 46, was tried for simple assault. The jury returned a verdict of *guilty*. Judge Gullett sentenced Dickson to 45 days in the Mecklenburg County jail; that sentence was suspended pending the successful completion of 12 months of unsupervised probation.

Christopher Fallenbeck, 37, was tried for driving while impaired. The jury returned a verdict of *guilty*. Judge Gullett sentenced Fallenbeck to 120 days in the Mecklenburg County jail; that sentence was suspended pending the successful completion of 24 months of supervised probation.

Yolondia Rainey, 41, was tried for driving while impaired. The jury returned a verdict of *guilty*. Judge Poovey sentenced Rainey to 60 days in the Mecklenburg County jail; that sentence was suspended pending the successful completion of 18 months of supervised probation.

Joseph Hood, 49, was tried for 1) hit and run, 2) reckless driving and 3) resisting a public officer. The jury returned verdicts of *guilty* for the hit and run and reckless driving offenses, and the jury found him *not guilty* of resisting a public officer. Judge Foust sentenced Hood to 30 days in the Mecklenburg County jail; that sentence was suspended pending the successful completion of 12 months of unsupervised probation.

Among those who pled guilty were:

John McMillian, 33, pled guilty to habitual driving while impaired. He was sentenced to 17-21 months in prison.

Andrea Wright, 50, pled guilty to driving while impaired. She was sentenced to 12 months in prison; that sentence was suspended pending the successful completion of 12 months of unsupervised probation. As a condition of probation, Wright must serve 8 days in the Mecklenburg County jail.

Jose Cruz-Avila, 34, pled guilty driving while impaired. He was sentenced to 18 months in prison; that sentence was suspended pending the successful completion of 24 months of supervised probation. As a condition of probation, Cruz-Avila must serve 45 days in the Mecklenburg County jail.

Note: Misdemeanors and infractions are originally prosecuted in district court in North Carolina. In criminal district court, a judge determines guilt, not a jury; this is commonly referred to as a "bench trial." However, defendants have a right to appeal a conviction from the district court to the superior court for a trial de novo. The new trial in superior court must be a jury trial, not a bench trial. In a de novo trial, the jury cannot be informed that a district court judge previously found the defendant guilty; further, a record of any evidence, including testimony, from district court may not be introduced. While the DA's Office prosecutes nearly 225,000 misdemeanors and infractions each year in district court in Mecklenburg County, each defendant is entitled to exercise his/her right to appeal to the superior court. When a misdemeanor or infraction occupies the limited time available in our superior courtrooms, it the intent of the DA's Office to keep the public informed of the results through news releases like this one. Due to the volume of misdemeanors and infractions prosecuted in district court each day, reports like this are not possible for all of those cases.

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