

# Whom does DUI law protect?

As the Highway Patrol prepares to renew its annual "Sober or Slammer" countdown to Labor Day, a Greenville DUI case offers the Upstate a graphic demonstration of just how challenging stopping a drunk driver can be.

The case involves a Greenville County man who racked up six DUI charges in the space of a year – five within two months – as well as a charge of leaving an accident scene. Yet he walked out of court two weeks ago with a suspended sentence and no further jail time.

The temptation is to hammer the prosecutor's office for negotiating a plea with a man with that kind of driving history. But it's the rest of the story that shows the tightrope 13th Circuit Solicitor Walt Wilkins and his fellow solicitors walk in prosecuting not just the unusual cases, but all DUIs.

As related during the July 20 plea hearing, Warren E. Brooks' six DUI charges occurred as six separate offenses – five of them between May 19 and July 2 of last year – and all before any had been tried in court. So all counted as first offenses. As Wilkins noted then, a second-offense charge requires a first-offense conviction.

After his sixth first-offense (Brooks rear-ended a car and left the scene), a magistrate ordered him to wear an alcohol-monitoring bracelet that tests blood alcohol content via body sweat. So, as Wilkins also noted then, the danger to the community was removed while Brooks awaited trial.

And waited. Though his back-to-back arrests were unusual, far less so were the delays and technicalities that put 13 months between Brooks' first arrest and trial and worked the final resolution two weeks ago with that two-year sentence suspended to 79 days served.

Continuances delayed the original trial for his first August 2010 arrest from February to June of last year, at which point the other charges prompted Wilkins to pull the case to assess the situation – with good cause.

Scheduling conflicts and delay tactics are the routine of court life. But DUIs fit a unique category in South Carolina, where every sentence of state law that could objectively confirm legal drunkenness has been fudged, weakened or turned into a debatable issue for a jury.

The opportunities for challenge are legion, and Wilkins' staff ran straight into the most egregious of them all with that first charge: Brooks walked outside the view of the arresting officer's dashboard camera during the field sobriety test.

The state's complex DUI law requires officers to videotape a DUI arrest from the moment the blue lights come on through the Breathalyzer test at the police station, showing the defendant's entire body at all times and including the Miranda warning. Thanks to Brooks' wandering gait, a judge dismissed the August 2010 charge.

State law also allows Brooks to refuse Breathalyzer tests, which he did. With the first charge dismissed, a hung jury on the second and no objective tests, a plea agreement was Wilkins' obvious choice.

The agreement ensures Brooks will blow into an ignition interlock system every time he starts a car and seek treatment for alcoholism, so that's some comfort.

But it's no surprise that one in three DUI defendants who request a jury trial in Wilkins' circuit end up with a reduced sentence, thanks to evidence problems tied to the minutiae of this egregious DUI law. According to the state court administration, Greenville County currently has 1,263 pending DUI cases and Spartanburg has 677. Do the math and ask yourself: Whom does South Carolina's DUI law really protect?