

DWI Dismissed After Trooper Sent Overseas

A Delaware County town justice dismissed a driving while intoxicated charge because the state trooper who issued the ticket was called to active duty in the United States Navy, according to defense attorney Mathew Tully.

Tully, who was representing Michael J. Reilly, 34, said trooper T. D. Owzarczak knew he was going to be called to active duty, but nothing was done by Delaware County District Attorney Richard Northrup to record his testimony before his departure.

Northrup was in a meeting Wednesday and couldn't be reached. However, in a letter dated Jan. 5, Northrup wrote, "As you and (Justice Glen) George are obviously aware, Trooper Owzarczak is currently serving overseas on military duty and is presently unavailable to appear for either a probable cause hearing or a trial.

"Due to these 'exceptional circumstances,' I submit that the case should merely remain pending until his return," Northrup wrote.

But on March 22, Middletown Justice George dismissed the charge against Reilly, sealed the records and ordered the state police in Sidney to destroy Reilly's fingerprints and photograph. Tully said he received official word about the decision Wednesday.

Tully said he researched George's decision and couldn't find another case in which a similar decision was made.

He did locate three cases, using a search on Lexus-Nexus, in which motions to dismiss cases because prosecution witnesses were serving military duty were denied or overturned by the appellate division.

Tully said the other cases involved military service with a defined time frame, but in Owzarczak's case, he has been deployed for an indefinite length of time that could have amounted to years rather than months.

According to Tully, his client was not drinking and driving at the time of his arrest.

"He was parked in a private driveway at his girlfriend's house," Tully said. "His car had broken down, and he called a wrecker to come and remove it. While he waited for the wrecker, he had a couple of beers."

Tully said the driver of the wrecker was willing to testify that he didn't respond to Reilly's call for over an hour and a half and when he arrived, he found that the car had a smashed axle and was completely disabled.

Owzarczak stopped because the wrecker was blocking the road. When Reilly came out of the house on County Route 30 in Middletown to talk to him, Owzarczak charged him with driving while intoxicated, Tully said.

"My client had been driving and he was drinking, but he didn't do them at the same time," Tully said.

When asked about the dismissal, Reilly said Wednesday, "It was a very fair thing that happened. I just broke down. I wasn't drinking and driving. This whole thing had my life in turmoil."

Reilly said he got the ticket at 9 p.m. on Dec. 26, 2002. He said that he lived in Denver at the time but has since moved to Bridgeport, Conn.

"It was hard getting back for court appearances," Reilly said. "I'm glad it's over."

Tully said this was Reilly's first driving while intoxicated charge.

"He has a clean record," Tully said. "He didn't do this."