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CORONERS CAN'T FORCE DRIVERS TO BE TESTED FOR DUI, COURT RULES

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Staff Writer

Coroners cannot force motorists suspected in drunken-driving deaths to submit to alcohol tests once drivers have said no, the state Supreme Court ruled Monday.

The unanimous decision in a 1993 Richland County case means the state law that allows suspects to refuse breath or other tests of alcohol consumption extends not only to police but to coroners. "If a driver doesn't want us to know what is in his blood . . . then we're not going to know," said 5th Circuit Solicitor Barney Giese, whose office must decide whether to try Patrick Mullins, the driver who refused the tests. Mullins was indicted of felony DUI in the Aug. 10, 1993, death of Timothy Andrew Turner.

Giese said the ruling will not stop DUI prosecutions because alcohol readings usually are "icing on the cake" of a good case. Police and prosecutors get convictions with testimony from witnesses and arresting officers and with evidence such as bottles, cans and the smell of alcohol, he said.

Mullins was driving a pickup truck that skidded through a stop sign at Frost Avenue near Monticello Road. He hit a motorcycle carrying Turner and pushed it into a Toyota.

Mullins refused to be tested for drinking, but open containers of beer and alcohol were found in his truck, according to records.

The Richland County Coroner's office ordered the blood sample while Mullins was being treated at Richland Memorial Hospital. A state trooper held Mullins while hospital workers took the sample, Mullins' lawyer, **Jack Swerling**, said.

Circuit Court Judge Costa Pleicones threw out the test results before trial. The justices Monday agreed with Pleicones.

Under the state's so-called implied-consent law, motorists agree to submit to such tests when they accept a driver's license. But the Legislature in the 1970s provided a loophole that allows drivers to refuse at the risk of losing their driving privileges for 90 days.

The punishment for a felony DUI conviction is 25 years.

The implied-consent law also allows drivers to appeal a license suspension, but most appeals fail unless police failed to follow proper procedures, **Swerling** said. In a trial, prosecutors may tell jurors about the refusal.

Courts often have upheld the law when it comes to police. Now the justices have ruled that coroners can't forcibly gather evidence, either, the defense attorney said.

In addition, the court ruled that coroners don't have the authority to take evidence from the living, **Swerling** said.

Richland County Coroner Frank Barron said he worries the ruling will make it tougher to get DUI convictions. He suggested the implied-consent law be changed. But Giese said that isn't necessary.

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