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DWI conviction for hangover breaks new ground; driver to be sentenced today

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Driving sober may no longer be a surefire defense against a DWI charge in New Jersey.

In a jury trial that might be the first of its kind in the state, Bergen County prosecutors recently obtained a conviction against a man who was accused of driving with a "cocaine hangover" when he caused an accident that seriously injured a Little Falls woman. He could receive up to five years in prison when he is sentenced today.

"A lot of people think of intoxication as the high from cocaine or the buzz from alcohol," said Deepa Jacobs, the assistant Bergen County prosecutor who handled the case.

"Intoxication is also the effect of the drug on your body after the high wears off," she said.

Prosecutors and some attorneys say that this relatively novel approach will help make the roads safer. Others are concerned that such a broad definition of "driving while intoxicated" could target drivers whom the state's DWI law was never meant to penalize.

"This might include anyone who is sick or is taking prescription medication," said John Menzel, a DWI defense attorney. "It's a dangerous thing because it just brings into the net too many people who are not part of the problem."

Kenneth Verpent, 47, of Wharton was driving a 15,000-pound tow truck in Fort Lee on Dec. 3, 2008, heading to a job in New York City. As he approached the upper-level toll plaza on the George Washington Bridge, he rammed his truck into the back of a Honda Accord driven by Sabrina Patrick of Little Falls.

Patrick's car was then crushed between Verpent's truck and another truck that was in front of her.

The crash left Patrick, now 40, with a fractured spine, Jacobs said. She has since left her medical-billing job because of her injuries and has moved to Arizona to escape the humid weather on the East Coast, Jacobs said.

Bloodshot eyes

Verpent's eyes were bloodshot and his pupils were constricted at the time of the crash, Jacobs said. He seemed slow, lethargic and unsteady on his feet, she said.

His blood-alcohol level turned out to be zero, but his urine tested positive for cocaine, Jacobs said.

Forensic toxicologist H. Chip Walls from the University of Miami explained during Verpent's trial that cocaine, like most stimulants, leaves a user depressed, drowsy and fatigued once its effects wear off.

Because cocaine stays in the body for only a short time, its downside — known in lay terms as a "cocaine hangover" or a "cocaine crash" — can occur quickly.

"I have seen people taking cocaine in clubs and they would be euphoric," Walls said in an interview this week. "And minutes later you have to shake them to wake them up. They go from being the Energizer Bunny to being unable to do anything."

Anyone driving during that "hangover" period can be just as impaired as someone who had a lot to drink, Walls said.

"This is true with any drug that pumps you up," he said. "When it is taken from you, you will definitely feel the letdown."

Another case

One similar New Jersey case involves a Cape May County man, David Franchetta, who was pulled over in April 2005 for driving erratically. Police found that Franchetta had no alcohol in his system but had cocaine residue in his blood.

A municipal court judge later found him guilty of DWI, and a state Superior Court judge in Cape May County affirmed the conviction.

"It's clear that whether you call it a cocaine hangover, or simply part of the continuum of the physical manifestations of significant cocaine consumption &hellip the defendant was operating a motor vehicle while under the influence of cocaine at the time of the stop," the judge ruled.

An appeals panel later upheld that ruling, saying it was consistent with the intent of the state's DWI laws.

"The purpose of the statute is to deter and sanction those who disregard the safety and welfare of members of the public by operating a motor vehicle in an

impaired state," the panel ruled in a 2007 decision.

Ian Hirsh, a Hackensack defense attorney, said such an interpretation of the state's DWI law was "completely reasonable."

"There is such a thing as a cocaine hangover," he said. "There are some drugs that have an aftereffect."

Whether such an approach could be used to prosecute drivers suffering from an alcohol hangover is not yet clear.

Different hangover

Jacobs, the assistant Bergen County prosecutor, said the "hangover" from cocaine is very different from the hangover from alcohol. What matters, she said, is whether the hangover, be it from drugs or alcohol, resulted in impaired driving.

"If a hangover from alcohol affects your ability to drive, then yes, it [a DWI prosecution] is a possibility," she said. "But I think we are yet to see that type of situation in New Jersey."

Menzel, who has been practicing DWI law since 1987, said prosecution for driving with a "cocaine hangover" is part of a recent pattern of enforcement that is snaring more and more drivers into the DWI trap.

"I have had half a dozen clients this year who were charged with DWI because they had prescription medication with them," he said. "This sort of enforcement targets people who are not part of the problem."

Menzel said he is pursuing an appeal on behalf of one of his clients who was recently convicted of DWI in Middlesex County for driving while taking a prescription medication.

He also said Franchetta's case, which led to the only precedent-setting decision in the state on the issue of "cocaine hangovers," may not be the last word.

Specifics crucial

Richard Saferstein, a forensic toxicologist and a former chief of the New Jersey State Police lab, said it would be a mistake to make generalizations either way.

"A lot will depend on the specifics of the case," he said. Prosecutors need to consider, among other factors, how much drugs the driver ingested and how long

before getting behind the wheel the driver used the drugs, he said.

Being drunk or being high on drugs is not the only way to be intoxicated, he said.

"There are all sorts of people today who drive impaired, outside of alcohol and drugs," Saferstein said.

Verpent was convicted in Superior Court in Hackensack of DWI and assault by auto. His attorney, Craig O'Connor, said Verpent passed a series of field sobriety tests immediately after the accident. He said he plans to appeal Verpent's conviction.

"This was not somebody who was so obviously intoxicated," O'Connor said.


But Jacobs said the verdict "clearly reflects the public's need to appreciate that the effects of drugs on the body after the initial buzz or high wears off may constitute impairment.

"And if you get into a car and you cause injury," she said, "you are going to be prosecuted."

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