

New trial ordered in deadly drunk driving case because victim tested positive for pot

by Shena Abercrombie | The Flint Journal

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LAPEER COUNTY, Michigan -- The conviction of a man found guilty in 2006 of driving drunk and killing a Lapeer County man has been tossed out because the victim tested positive for marijuana.

The Michigan Court of Appeals ordered a new trial for Matthew Soares of Deford in part because the jury was never told blood tests showed the presence of THC, the psychoactive ingredient in marijuana, in William Day of Almont at the time of the 2004 crash.

Day, 59, was killed Aug. 19, 2004, when the motorcycle he was riding on North Branch Road collided with Soares vehicle at the intersection of Lake Pleasant Road. Day had the right of way because Soares had a stop sign.

An expert testified during the trial that Soares' blood alcohol content was between 0.07 and 0.09 percent at the time of the crash.

The high profile case captured the attention of the Lapeer community for months with Day's family lobbying Lapeer County Prosecutor Byron J. Kenschuh for second-degree murder charge. Led by Day's widow, Gloria Day, the family staged demonstrations and purchased full-page ads in the local paper.

Kenschuh eventually recused himself from the case, and it was reassigned to Genesee County prosecutors.

Soares was convicted of drunken driving causing death and manslaughter with a vehicle in 2006 and sentenced to 7 to 15 years in prison.

The Appeals Court ruling was handed down Thursday. Neither Day's nor Soares' families could be reached for comment.

"The trial court had concluded that evidence of the marijuana in the victim's blood should be excluded because it 'was more prejudicial than probative.' On interlocutory appeal, this Court ruled that the trial court had abused its discretion in excluding this evidence," concluded Judges Donald S. Owens and Peter D. O'Connell in the majority opinion.

A dissenting opinion given by Judge Alton T. Davis was skeptical that the evidence excluded was a smoking gun, calling it "tenuous."

"There is no evidence that any person could react fast enough," he wrote. "Furthermore, the victim had the right of way at that intersection and might reasonably have expected that there would be no need to stop, irrespective of whether he was intoxicated."

Lapeer County Circuit Court Judge Nick O. Holowka, the presiding judge in the trial, would not comment specifically on the ruling by the higher court, but confirmed a retrial would take place in his court.

"We're going to do what the Court of Appeals requested, as soon as we contact the Genesee County Prosecutor's office and set a date," he said.