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Erie Times-News (PA)

DA LOSES FIGHT TO USE EVIDENCE

December 9, 1998

Tag: 1998343064

BYLINE: ED PALATTELLA

The Erie County District Attorney's Office again has been prohibited from using blood-alcohol evidence in the "fight or flight" case of a fatal car accident at West 28th Street and Elmwood Avenue in July 1997. The state Superior Court last week affirmed Erie County Judge Shad Connelly's suppression of the blood-alcohol test as trial evidence. The appeals court, among other things, said Erie police erred by obtaining the blood sample with a flawed search warrant.

Without the evidence, the prosecution's case is weaker against the defendant, Richard Cosnek, 20, of suburban Pittsburgh. He is accused of causing the July 5, 1997, accident that killed Joseph Trigilio, 32, of Erie.

Part of Cosnek's defense is his assertion that another motorist was chasing him when he ran a stop sign in his car at the intersection. Cosnek, according to pretrial evidence, is contending he was afraid the motorist might catch him and hurt him.

The blood-alcohol test results showed Cosnek's blood-alcohol content was .102 percent, according to court records. The legal limit for driving in Pennsylvania is .10.

Saint Vincent Health Center, which treated Cosnek for injuries, drew blood and did the blood-alcohol test for medical reasons. The police obtained those results through the search warrant.

The district attorney's office conceded the warrant, which officer Karl Kelm wrote, lacked enough probable cause to be valid. But the prosecution argued police would have obtained the blood-alcohol test results anyway, independent of the flawed warrant.

The Superior Court disagreed in a unanimous opinion from a three-judge panel.

"The commonwealth has not met its burden of demonstrating that Cosnek's blood test results were or would inevitably have been discovered despite the invalidity of the search warrant," the Superior Court wrote. "There is no evidence found in the record that would seem to suggest that a subsequent search warrant or subpoena was or would have been issued for the hospital records."

The prosecutor, Assistant District Attorney Christian Trabold, is reviewing the opinion to decide whether to ask the state Supreme Court to hear an appeal. If the blood-alcohol evidence remains inadmissible,

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Trabold said, he still will try to introduce eyewitness evidence to allege Cosnek was drinking before the accident.

William Weichler of Erie is Cosnek's lawyer. He said if the blood-alcohol evidence remains inadmissible, he might challenge the relevancy of the other prosecution evidence that would suggest Cosnek had been drinking.

Weichler also said he plans at trial to introduce defense evidence that shows another motorist was chasing Cosnek.

Connelly, in a pretrial ruling, prevented the defense from having a psychiatrist testify at trial about "fight or flight syndrome." The psychiatrist would have explained that the syndrome is a medically recognized condition that would have affected Cosnek's metabolism by speeding up his heart rate, for example.

His non-scientific evidence, **Weichler** said, still will support the contention Cosnek was driving as he was because he was afraid.

"This is a unique set of circumstances," **Weichler** said.

Cosnek, who is free on bail, is accused of vehicular homicide while driving under the influence of alcohol or drugs, the separate charges of vehicular homicide and drunken driving, and involuntary manslaughter, reckless driving, speeding and running a stop sign.

The vehicular homicide while drunk charge is the most serious. A conviction on that count carries a mandatory minimum three-year prison term.

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