

"It was the Car's Fault" - Part I

by John Kwasnoski

You have what you believe to be "slam dunk" proof that the defendant crossed the center line and caused the fatal head-on collision. A few months after the crash however, defense counsel asserts that a pre-impact tire blow-out caused the fatal collision. What do you do now? How do you prove that tire failure was not the cause of the crash?

Sudden tire deflation (blow-out) is very rare and does not necessarily result in loss of vehicle control. So when the defendant claims "it wasn't my fault," be sure to check with your investigator for any evidence to support or refute the defense. For example, a deflated tire may leave characteristic "scalloped" tire marks and the deflated tire may expose the rim to damage. An inspection by a knowledgeable tire expert may reveal whether damage was done prior to impact or during the collision.

A tire blow-out or some type of mechanical failure defense may not always be obvious during the on-scene investigation. For this reason, in every case a complete inspection or vehicle "autopsy" should be performed. The vehicle is part of the crime scene. As routine policy, a defendant's car should be immediately secured and not released until the state has conducted a thorough inspection of the vehicle and the defendant states there will be no further inspection by the defense expert. The vehicle needs to be covered or stored indoors and no one should be allowed access without police supervision. If storage facilities are not available and the towing company's fees are astronomical, consider commercial self-storage units as an alternative to keep costs down.

The following two inquiries may also save you time, money and headaches. First, check whether there has been a manufacturer's recall of the make and model car that the defendant was driving. For this information contact the Department of Transportation National Highway Traffic Safety Administration's Auto Safety Hotline at 800-424-9393, or log onto its website at www.nhtsa.dot.gov. Second, check with a mechanic in a local car dealership that sells the same make of car as the defendant's to inquire as to any peculiar problems with that particular model car.

John Kwasnoski, a professor of forensic physics at Western New England College in Springfield, Massachusetts, reconstructs crashes and offers expert testimony.

Available Resources

Photographic Traffic Law Enforcement, A report prepared for the Transportation Research Board by Daniel T. Gilbert, Nina J. Sines and Brandon E. Bell. This publication examines the evidentiary rules in the states governing the admissibility of photographs and video tapes for traffic enforcement. It includes a synopsis of existing state laws, a summary of State Attorney General opinions regarding photo traffic enforcement, and a model law. The 51-page report costs \$16.00 and can be ordered by contacting the Transportation Research Board at 202-334-3214.

ASK DOCTOR TOX

Q: In cases where it is suspected that a person is driving under the influence of a drug other than alcohol, is it better to obtain a blood or a urine test?

A: It is better to obtain a blood specimen for analysis to determine if an individual is driving under the influence of drugs. Drugs circulate to their site of action through the bloodstream. The drug must be present in the blood to have its effect. Urine is the end product of the kidney's removal of waste products from the body. A pooled urine specimen represents an average concentration of a drug(s) over the period of time that the urine was produced. It does not accurately reflect the drug concentration in the blood at any single point of time. Additionally, drugs can be detected in urine for longer periods so that it is possible for a drug to be present in the urine and not in the blood. Accordingly, a positive test result in the urine can only be used to state whether the observed behavior of the defendant is consistent with the

drugs detected. The toxicologist cannot say the defendant was under the influence of the drug based on a urine test result.

Dr. Teri Stockham will answer questions submitted by our readers. Dr. Stockham, formerly the Chief Toxicologist for the Broward County Medical Examiners Lab in Fort Lauderdale, Florida, is now a full-time consultant. Please submit questions in writing to NTLC, 99 Canal Center Plaza, Suite 510, Alexandria, VA, 22314 or fax: 703-836-3195.

Crashes Aren't Accidents

Impaired driving that results in death or injury is not an accident; it is a violent crime. An "accident" is something that could not have been prevented. When addressing the court, talking with victims or speaking with the media, refer to the incident that injured or killed someone as a CRASH, not an accident.

Arresting Developments

Milwaukee, Wisconsin - Prosecutors charged an impaired driver with DUI and child endangerment for allowing his 8-year-old daughter to take the wheel while he worked the pedals. A crash ensued damaging 7 cars and injuring six people.

Rockville, Maryland - Prosecutors charged the passenger in a vehicle with manslaughter and DWI. The impaired passenger allowed his 16-year-old unlicensed son to drive. The prosecution argued the father grabbed the wheel just before the car collided with a bicyclist killing the Olympian tri-athlete. Due to conflicting testimony, the jury had trouble placing the father's hands on the wheel and, therefore, acquitted him of those charges.

Canton, Georgia - In addition to 13 years in prison, a woman convicted of vehicular homicide was ordered to visit the grave of the child she killed for at least seven anniversaries after her release. The 21-year-old woman was high on methamphetamines at the time of the crash.

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