

Infamy 10 Who was driving?

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My inquiries into the Markotay matter included a trip to the Boulder City Police Department. When I asked for a copy of the report on Markotay's DUI, I was informed politely, but firmly, that it was not public information. I raised the issue of Markotay's DUI on the Forum on 7/24/10. The next day I received an e-mail from a Forum reader who explained some of the problems in bringing charges. I was told that both Markotay and his passenger, David Cole, exited Markotay's vehicle immediately after the collision. Both were intoxicated. Both claimed that the other had been driving. There were no independent witnesses to the actions of Markotay and Cole immediately following the crash. As I stated in my last post, the city has a real problem with the concepts of due process and equal protection under the law. That information deemed confidential, is provided to one resident, and denied to another, is yet another example of this issue.

Reading the affidavit in support of the arrest warrant for Markotay places matters in a different light. The crash of 2/22/10 was not the first time that Markotay was caught under the influence by the BCPD. Markotay contacted Cole and attempted to persuade him to make false statements. (A crime in itself.) Markotay claimed not to have driven to Winterrowd's on the evening of 9/26/09, but the BCPD found his car parked nearby. All this adds up to evidence of character and that could be introduced into a court proceeding to discredit (impeach) such testimony as Markotay might give under oath. Based upon the facts set forth in Pastore's affidavit, any prosecutor worthy of the title could have taken the DUI to trial and made a very credible showing.

Not having a copy of Markotay's accident report does not prevent us from speculating on the evidence that might have been present at the crime scene. Did the collision with the light pole cause the airbags in Markotay's Crown Victoria to deploy? Blood/saliva traces on the airbags would have established who was driving at the time of the collision. Did the shock/surprise of impact cause either party to void bladder or bowels? This again could have established who was in the driver's seat. Did either party have any injuries from the impact as would have established the seating arrangement? Cole, as I recall, is of greater stature than Markotay. Can the identity of the driver be established through the way the steering wheel and driver's seat were adjusted? There were handguns found in the street at the accident scene. Were the handguns on the driver's side or the passenger's side of the vehicle? Whose fingerprints were (or were not) on the handguns?

Defendants in criminal actions (Dave Olsen notwithstanding) seldom cooperate in their own prosecution. That is why our system of justice is sometimes referred to as being "adversarial." It is a contest, with the rules slanted in favor of the accused, who is assumed innocent until proven otherwise. In Markotay's case there is additional evidence, that speaks to the issue of character and truthfulness, that must be considered. We will begin that process tomorrow.

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