

Questions arise in Buffalo DUI case

Prosecutors drop charges; man alleges he was framed

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Published Wednesday, January 23, 2008

BUFFALO — Prosecutors on Tuesday dismissed drunken driving charges against a man who says he was framed by members of the Buffalo Fire Department.

At first, the case against James W. Berndt looked like a slam dunk.

Two members of Buffalo's all-volunteer department said they happened to be driving in the area last spring and saw the whole thing: A Dodge pickup skidded across U.S. 36 just outside Buffalo, northeast of Springfield, and crashed into a ditch.

Berndt was alone inside, they told a state trooper, and they helped pull him out.

Berndt, who had a blood-alcohol content of .243 percent — more than three times the legal limit — confessed from a hospital bed, telling a trooper, “Yes, I know, sir, I shouldn't have been driving.”

Even Berndt's lawyers doubted him. As recently as Thursday, his attorneys warned him that perjury carries steep penalties.

“There's no case here,” defense attorney Dan Fultz recalls thinking. “I told Jim: ‘This defense is so stupid, it's laughable.’”

But eight months after the crash, Berndt's defense — that he wasn't behind the wheel — has worked, at least for now. Besides dismissing charges, prosecutors are asking the Illinois State Police to reopen the investigation to determine who was driving.

Berndt and Fultz say Joseph M. “Joey” Branham, the truck's registered owner and a former volunteer with the Buffalo Fire Department, was behind the wheel.

Branham, who, according to a state trooper's report, smelled of alcohol when he arrived at the accident shortly after the crash, could not be reached for comment. He has told police at least twice that he wasn't driving.

Berndt and his lawyers don't buy it.

“Because everyone knew each other from the Buffalo Fire Department, we believe someone from the department helped Joey get away from the scene,” Fultz said. “We don't know who, we don't care. All we know is, our guy wasn't driving.”

Chief Josh Nibbe of the Dawson Fire Department, which responded to the call, told a state trooper that a Buffalo firefighter tossed a bottle of gin away from the crashed pickup, the state police report says. Fultz said he has other witnesses.

“We can put Joey Branham behind the wheel through four or five witnesses that day and throughout the evening,” Fultz said.

Physical evidence also raises questions:

* After the accident, Berndt spent the night at St. John’s Hospital, where he was treated for facial cuts and injuries to his head. The driver’s side windshield of the pickup was intact, but there was a circular crack in the glass consistent with a head hitting the windshield on the passenger side, just right of center.

* In an interview, Berndt said there was no way he could have been in the driver’s seat. The truck’s tilt steering wheel, Berndt said, was stuck in the lowest position even before the crash. It would have been a tight fit for Berndt, who is 6 feet, 3 inches tall and weighs more than 250 pounds.

“How in the hell am I driving this truck?” he asked.

Berndt said he confessed within hours of the crash because he was suffering from a concussion and because someone, he’s not sure who, told him he had been driving before police arrived.

The day after the May 6 accident, Berndt backed off his confession, telling a trooper he didn’t remember much about the accident and wasn’t sure if he had been driving.

“I’m not saying I wasn’t, I just don’t remember,” Berndt told the trooper.

Steve Weinhoef, Sangamon County first assistant state’s attorney, said the charges against Berndt could be reinstated.

“There have been some additional questions that have been raised that we are looking into,” Weinhoef said. “The additional investigation is simply focused on who was driving, period.”

The husband and wife who said they witnessed the accident told a trooper there was “no possible way” anyone could have gotten out of the pickup after the wreck without them seeing it.

According to a police report, the woman also reported that Berndt said, “I’m in big trouble. I’ve been drinking, and this is my last chance.”

The couple, both members of the Buffalo Fire Department, could not be reached for comment. Weinhoef said they are not under investigation.

Berndt pleaded guilty to DUI in 1990 and again in 1994, according to Sangamon County Circuit Court records. Had he been found guilty of DUI again, he said, he was facing serious jail time.

“Never again would he drive a vehicle,” said attorney Mark Wykoff, who helped Fultz with the case and represented Berndt in court Tuesday. At that hearing, Circuit Judge John Childress dismissed charges against Berndt of aggravated DUI, driving on a revoked license, illegal transportation of alcohol and improper lane usage.

Berndt, whose mother drove him to court Tuesday, said he knows his limitations and isn't interested in getting his driver's license back.

“I don't drive,” Berndt said. “That was the whole point.”

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