"Montana Supreme Court addresses 'Date Rape' drugs in DUI cases"

In a decision handed down on November 20, 2012, the Montana Supreme Court held, in a case of first impression in Montana, that "automatism" (being in an unconscious or semi-conscious state and therefore unable to voluntarily control one's actions) is an available defense to a DUI charge in Montana; that while the defendant is entitled to this defense it must be plead affirmatively; and according, the defendant must give written notice to the prosecution that this defense will be used prior to the hearing.

FACTS:

On January 19, 2010, Missoula, Montana city police officer Christian Cameron (Cameron) observed an SUV being driven by the defendant, Leigh Paffhausen, run a stop sign. Shortly thereafter, Cameron claimed to have seen Paffhausen prematurely apply her brakes at another stop sign. Cameron testified that upon stopping the defendant's vehicle, he noticed that her speech was both slow and slurred; and that she had an odor of alcohol on her breath. Cameron attempted unsuccessfully to administer field tests to Ms. Paffhausen. Paffhausen refused to provide a breath sample. She was arrested for, among other things, driving under the influence of alcohol (DUI). Shortly after being charged with DUI, Paffhausen notified the Missoula police department that she believed she had unknowingly received or been given a "date rape" drug that had caused her impairment.

Prior to the lower court trial, Paffhausen filed written notice that she intended to insert the defense of "involuntary intoxication." She also filed a witness list with the court regarding asserting that defense. The city responded that the defendant could not avail herself of this defense to a DUI charge arguing "That such a defense can only be asserted when a defendant's mental state constitutes an element of the charged offense." The City pointed out that DUI in Montana is an "absolute liability offense; therefore, under Montana law, the defense of "involuntary intoxication" cannot be used by the defendant in a DUI prosecution. Paffhausen responded that she was not asserting the defense of involuntary intoxication to challenger her mental state, but rather to demonstrate that she did not commit a voluntary act by driving her vehicle that night.

PROCEDURAL HISTORY:

The municipal court granted the prosecutor's motion to prevent the defendant from claiming or using the defense of involuntary intoxication. Paffhausen next appealed to the district court, but that court affirmed the municipal court's ruling. The district court opinion went on to hold that Montana law did not contemplate "involuntary drugging" as a defense in a DUI charge. Paffhausen then appealed to the Montana Supreme Court.

ISSUES:

1. Did the trial court err by failing to apply the voluntary act element of Montana's DUI law?

2. Did the lower court err in excluding the police officers from testifying as to their personal knowledge, opinions and statements regarding whether the defendant was unknowingly drugged, and then voluntarily drove a vehicle?

HOLDING:

The lower court erred in refusing to allow Paffhausen to raise and present "automatism" as an affirmative defense in this case. Automatism refers to behavior performed in a state of unconsciousness or semi-consciousness such that the behavior cannot be deemed voluntary. This unconscious or semi-conscious state may be brought about by anyone of a variety of circumstances including epilepsy, stroke, concussion or involuntary intoxication. Paffhausen should've been given the opportunity to prove by admissible evidence that she did not act voluntarily when she drove her vehicle. The Court specifically noted that Montana already recognizes "compulsion" as an acceptable affirmative defense in DUI cases even though DUI is an "absolute liability" offense under Montana law. Montana law has specifically codified the affirmative defense of "compulsion" at §45-2-212, MCA. In State vs Leprowse 2009 MT387, 353 Mont. 312, 221P.3d 648, the Montana Supreme Court held that compulsion is a well recognized basis for finding a defendant not guilty of the charged offense even though the defendant's conduct appears to fall within the definition of that offense (in Leprowse, the Montana Supreme Court overruled the district court and concluded that Leprowse could give evidence in support of her affirmative defense of compulsion to a DUI charge where the defendant testified that she drove 14 miles away from the bar to escape an attacker when she felt she had no other option). In the case at bar, and specifically citing the Leprowse opinion, the Montana Supreme Court held that Paffhausen should have been entitled to present her defense of "automatism" in this case; and according, reversed and remanded the case for trial.

The Montana Supreme Court went on to hold that a defendant asserting a defense of "automatism" is required to provide the State with written notice of the defense well in advance of trial. Additionally, it is for the court to determine at a pre-trial hearing whether or not the defendant has made out a prima facie defense using admissible evidence of "automatism". If the accused is able to establish the defense of automatism on a prima facie basis, it is up to the jury to then determine if the defendant has established a reasonable doubt as to their guilt at the trial of the case.