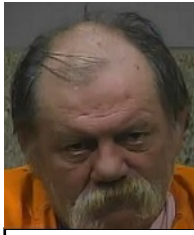


Minnesota Court Of Appeals Tosses Scooter Drunk Driving Conviction

The Minnesota Court Of Appeals overturned James Anthony Brown Jr. driving while intoxicated conviction on June 13, 2011. The court ruled that the scooter Brown was operating was not a motor vehicle and therefore he didn't violate the DWI law.

James Anthony Brown Jr. was a 60-year-old disabled man living in Grand Rapids, Minnesota in the summer of 2009. Brown got around by riding his battery operated three-wheel scooter on city sidewalks. His scooter had a maximum speed of 5 mph. On July 29 he rode his scooter to a local business where an employee thought he smelled alcohol on Brown's breath and called police. When the police arrived Brown consented to being given a breathalyzer test that registered a blood alcohol content of 0.17. Brown was arrested and charged with driving while intoxicated because his alcohol level was more than twice the legal limit of .08 for a driver. He was jailed overnight before being released on bail.

Prior to Brown's trial his lawyer filed a motion to dismiss the charge, arguing that under state law a scooter isn't legally considered a "motor vehicle" and consequently Brown can't be considered to have been the "driver" of a motor vehicle as required by the DWI



James Anthony Brown Jr. (Itasca County)

statute. The judge denied Brown's motion and he was subsequently convicted of third-degree driving while intoxicated. The judge sentenced Brown to one-year in jail, with all but 30 days suspended if he had no arrests for three-years. Brown's sentence was stayed pending the outcome of his appeal.

On June 13, 2011 the Minnesota Court Of Appeals overturned Brown's conviction. The court ruled that the scooter Brown was operating while intoxicated was not a motor vehicle and therefore he didn't violate the law. The Court ruled in *State v Brown*, No A10-1192 (MN Ct of Appeals, 6-13-2011) that:

... a driver's license is not required to operate the scooter, vehicle insurance is not required for the scooter, and the scooter cannot be registered at the Department of Public Safety in order to obtain vehicle license plates...

It is plain that for purposes of traffic regulations ... Brown's scooter is a wheelchair and is not a motor vehicle, and Brown, who uses the scooter as a substitute for walking, is, while operating his scooter, a pedestrian.

... we conclude that Brown's operation



James Anthony Brown Jr.'s scooter (KSTP-TV)

of his scooter as a substitute for walking does not make him the driver of a motor vehicle within the meaning of Minn. Stat. §169A.20, subd. 1, and does not subject him to criminal charges for operating the scooter while impaired.

... The district court erred by concluding that on July 29, 2009, Brown drove a motor vehicle while impaired in violation of Minn. Stat. § 169A.20, subd. 1(5), and was thereby guilty of gross-misdemeanor DWI. Reversed.

After Brown's conviction was overturned he told reporters: "They made a mountain out of a molehill. It never should have come to this. Go out and catch the bad guys instead of farting around with a guy on a scooter. It is a waste of taxpayer money."

It is anticipated that the ruling in Brown's case will not only affect scooter operators in Minnesota, but will influence how they are legally treated in other states.

Sources:

State v Brown, No A10-1192 (MN Ct of Appeals, 6-13-2011). Disabled Scooter Driver's DWI Conviction Overturned, *WDIO.com* (Duluth, MN), June 13, 2011. DWI conviction of Grand Rapids scooter user is overturned, *Minneapolis Star-Tribune*, June 13, 2011.

Police Scent Dogs Wrong 85% Of The Time In Searches For Drugs

Police scent dogs were wrong 100% of the time in alerting their handler to the presence of drugs during multiple sweeps of schools in Janesville, Wisconsin. During sweeps at six middle and high schools the scent dogs gave 80 alerts for the presence of drugs in a student's locker — and no drugs were found in any of the lockers. The dogs also falsely detected drugs in 13 cars during a sweep of the parking lot at two high schools. The sweep of a high school in nearby Edgerton by police scent dogs resulted in 9 alerts for drugs when none were present. So in those sweeps the dogs falsely alerted for drugs a total of 102 times — without correctly detecting drugs a single time.

The inability of the scent dogs to reliably detect drugs during the school sweeps is consistent with the finding of a recent double blind experiment involving 18 certified

police scent dog/handler teams that found they were wrong 85% of the time in detecting drugs and/or explosives. An article about that experiment, "Handler beliefs affect scent detection dog outcomes," was reported in the January 2011 issue of the journal *Animal Cognition*.

The scent dogs used to sweep the schools were certified to detect marijuana, cocaine, heroin and methamphetamine. The scent dogs inability to reliably detect drugs suggests the certification process is flawed since it does not involve a double-blind test to determine a dog's competence. A double-blind test is one in which the dog's handler doesn't know if there are any drugs in an area the dog is assigned to search or where those drugs might be located. The experiment of the 18 police scent dog/handler teams also supports that a handler sends conscious or unconscious cues to his dog where drugs or explosives are believed to be located. Consequently the only way to determine a scent dog's competence is to administer a double-blind test that prevents the handler from tipping off the dog where to search.

Although it is now known that a scent dog's alert for drugs and explosives is overwhelmingly likely to be false, the widely believed myth that dogs can accurately detect the presence of contraband is relied on by judges to almost automatically issue a search warrant when presented with scent dog evidence that is actually in the realm of "junk science."

If you go to the *Janesville Gazette's* website, www.gazettextra.com, and enter "drugs dogs schools" into the search box a series of articles will be listed about the scent dog searches in area schools.

Sources:

[Drug dog finds](#) nothing in Edison Middle School search, *Janesville Gazette*, Oct. 2, 2010. [Searches by dogs](#) yield no drugs at Janesville middle schools, *Janesville Gazette*, April 2, 2011. [Drug dogs search](#) Parker High School, *Janesville Gazette*, Nov. 23, 2010. [No drugs found](#) in Marshall Middle School search, *Janesville Gazette*, Dec. 16, 2010. [Craig High School](#) police dog search yields pot pipe, *Janesville Gazette*, Dec. 4, 2010. [Dogs come up empty](#) in drug search at Franklin, *Janesville Gazette*, Oct. 27, 2010. [No drugs found](#) during search of high school parking lots, *Janesville Gazette*, May 28, 2009. [No drugs found in](#) Edgerton search, *Janesville Gazette*, Oct. 29, 2009.