

Supreme Court Holds No Bright-Line Rule for Admission of BAC Evidence

In the recent case of *Coughlin v. Massaquoi*, the Supreme Court of Pennsylvania declined to adopt a bright-line rule concerning whether independent corroborating evidence of a pedestrian's intoxication is required in order for blood alcohol content (BAC) evidence to be properly admitted. The Court held, instead, that admissibility of BAC evidence is within the trial court's discretion based upon general rules governing the admissibility of evidence, namely, Pa.R.E. 401-403, as it specifically applies to whether a pedestrian is unfit to cross the street.

The facts of *Coughlin* involved a fatal collision between a motor vehicle and a pedestrian. The pedestrian's post-mortem toxicology test taken shortly after the accident revealed he had a BAC of .313, well above the legal limit for driving a motor vehicle in the Commonwealth, which is 0.08 and above. The pedestrian-decedent's whereabouts were unknown before the incident and there were no witnesses who observed his condition leading up to the accident. The police report submitted after the accident also did not note that he appeared intoxicated or that intoxication had been a factor in the accident. The decedent's estate attempted to exclude evidence of the BAC testing at trial arguing that such evidence lacked independent corroboration, was irrelevant and would prejudice the jury. The defendant-driver in turn presented the report of an expert toxicologist who said that the average person with a BAC of .313 would be "severely intoxicated," would have poor coordination, unsteady movements and "a significant deterioration in judgment and self-control" such that he could not safely cross the street without endangering his life and well-being.

The Supreme Court affirmed the lower court's allowance of the BAC evidence to be presented at trial, where the defendant-driver's negligence was found not to be the proximate cause of the decedent's death. In so holding, the Supreme Court highlighted the trial court's finding that the decedent's BAC had been "exceedingly high" which at the very least reduced the need for corroborating evidence regarding his unfitness to cross the street, if not obviating it altogether. The Court also cited the lower court's holding that the defense toxicologist's report had been "sufficiently corroborative on the issue of intoxication" to prove the decedent had been unfit to cross the street.

Comment: This holding can be extrapolated to a number of scenarios outside the pedestrian-motorist context. Above all else, it highlights the significance of retaining an expert toxicologist to explain the pertinent BAC and/or drug evidence, in that BAC and similar evidence will be admissible at trial, if supported by expert testimony that the alcohol or drug intoxication impaired the individual's fitness to perform a given activity. It also serves to belie the old contention that eyewitness or similar evidence corroborating the plaintiff's impairment is a prerequisite for BAC or blood test evidence to be admitted.

The litigation team at LUCAS AND CAVALIER, LLC prides itself on proactively enlisting the assistance of defense experts early on in the life of a case, to help develop winning strategies for discovery and trial presentation, including pre-trial investigations specifically pertaining to potentially dispositive intoxication evidence.

