

Monday, September 29, 2008

Herman Lee Taylor, Jr.: Meet Kumar Barve and Davis Ruark.

Photo from website of U.S. District Court (W.D. Mi.). The nation's drunk driving laws became out of whack by the time the states succumbed many years ago to federal legislation requiring drunk driving convictions for driving with a blood alcohol level of 0.08 or higher, under the penalty of losing valuable federal state highway funding. For one thing, such a per se guilty rule makes a mockery of the criminal law by failing to recognize that plenty of people can drive just fine at that blood alcohol level, and that plenty of people will not even recognize that they are over such a limit, because it is too low. For another thing, breath tests for blood alcohol content -- which tend to be cops' preferred testing methods because they are quicker, cheaper and less cumbersome than drawing blood, at least at the front end for cops -- are fraught with error based on such problems as machinery problems, errors by the people administering the tests, and fluctuations in the mouth temperature of the testing subjects, which temperature is often not measured by the people administering the tests. Moreover, the drunk driving laws -- at least in the jurisdictions where I practice law -- are draconian for those who assert what I consider to be their Constitutional right to refuse breath or blood tests. (See here, too.) Continuing the injustice of the nation's drunk driving prosecution regime, without breath or blood test results, prosecutors rely heavily on the junk science of field sobriety tests. Enough is enough. Let us go beyond Howard Beale (who advises to shout out your window "I'm as mad as hell, and I'm not going to take this anymore") and insist directly to our federal and state legislators and executives that they overturn the 0,08 drunk driving per se rule, eliminate the draconian penalties for refusing breath and blood tests in suspected drunk and drugged driving cases, and strengthen evidentiary rules against unreliable breath test, blood test, and field sobriety testing evidence. Let us also insist directly to our prosecutors to stop supporting such a draconian drunk driving regime. In the meantime, what is good for the goose is good for the gander. If otherwise law-abiding people are going to get unfairly dragnetted into the drunk driving laws, let government officials responsible for passing and administering such laws get a taste of their own unjust medicine. Without that, we may see no positive reform of such laws. In that regard, last May 2008, Maryland Delegate Herman L. Taylor, Jr., was arrested for driving under the influence of alcohol, and goes to trial on October 24, 2008, in Montgomery County, Maryland, District Court. (Thanks to Nobody's Business for blogging on this case.) According to the Washington Post, the police report in the case claims Mr. Taylor was found sleeping in his car with the engine running, that the "officer smelled alcohol and noted that Taylor was confused and disoriented and that his eyes 'were very red and watery.'" The police report also claims that Mr. Taylor displayed poor performance with field sobriety testing, which he ultimately refused to continue (which is his right). The Washington Post also reports that the police report says that after Mr. Taylor agreed to take a breath test for alcohol, he provided an insufficient breath sample which the police deemed a refusal, when in reality numerous innocent factors can cause someone to provide an insufficient breath sample, including the fatigue that Mr. Taylor's lawyer claims he was experiencing. Ironically, or fittingly, Mr. Taylor is getting a taste of his own medicine, having sponsored a bill in 2006 to require a scarlet letter license plate emblazoned with "DUI" for those with over two drunk driving convictions. To my knowledge, the bill did not become law. Mr. Taylor's drunk driving prosecution follows on the heels of this year's drunk driving prosecution, guilty plea and probation before judgment of Wicomico County, Maryland, chief prosecutor Davis Ruark and last July's drunk driving guilty plea and probation before judgment of Maryland house majority leader Kumar P. Barve in Montgomery County. As I said about Davis Ruark's case, hopefully Mr. Taylor's and Mr. Barve's ordeals with the police and in the criminal court system will make them more empathetic to the plight of everyone else facing such ordeals. Jon Katz

Posted by Jon Katz at 00:00

I agree completely with your assessment of the drunk driving laws in Maryland. If you recall, just three years ago D.C residents and visitors were in an uproar over the no tolerance policy the DC Council had exhibited over driving under the influence. There were numerous cases of people who were arrested after blowing a .01, and the DC Council finally voted to "relax" the law by allowing .05. I'm not sure if Mayor Williams ever signed that bill into law. I know he didn't really like the way it was written so quickly.

Anyway, great post as usual Mr. Katz. Thanks for the continuous info.
Anonymous on Sep 29 2008, 10:05

Thanks, Ravi, for your message. I write here on DC and low alcohol tolerance by the humorless drinking and driving enforcers:
<http://katzjustice.com/CRIMINALblog.htm#7>
Anonymous on Oct 1 2008, 19:25

Seriously the laws regarding drunk driving should get strict. These drunken people should know what they are doing. They are risking their life as well as others life. They should be hanged.
Anonymous on Dec 2 2008, 11:19