

MICHIGAN SUPREME COURT DECISIONS

People v. Feezel, 486 Mich 184; 783 NW2d 67 (2010):

Issue: Is 11-Carboxy-THC a derivative of Marihuana and a Schedule 1 Controlled substance?

Holding: No, the court held that 11-Carboxy-THC is not a derivative of marihuana and therefore is not a Schedule 1 Controlled substance.

The victim was walking in the paved portion of a 5 lane road. His BAC was .268. It was dark and raining. The Defendant struck the victim and left the scene. The trial judge precluded admission of any evidence regarding the victim's intoxication. The Defendant was convicted of operating with the presence of a schedule 1 controlled substance causing death, leaving the scene of an accident resulting in death, and OWI, 2nd offense.

The Defendant appealed, claiming that evidence of the victim's intoxication should have been admitted on the issuance of causation, and that the presence of 11-carboxy-THC in his blood did not constitute a schedule 1 controlled substance.

In *People v Derror*, 475 Mich 316 (2006) the Michigan Supreme Court ruled in a 4-3 decision that 11-carboxy-THC, a metabolite of marihuana, is included in the statutory definition as a derivative of marihuana. Accordingly, the *Derror* majority upheld the Defendant's conviction for operating with a schedule 1 controlled substance in her system based upon the presence of 11-carboxy-THC in her blood.

Justice Hathaway joined the three *Derror* dissenters in this case to overrule *Derror*.

The majority held that 11-carboxy-THC is not a derivative of marihuana, and therefore is not a schedule 1 controlled substance. Accordingly, they reversed this Defendant's conviction for operating with the presence of a schedule 1 controlled substance causing death.

Justices Young, Markman and Corrigan dissented from this holding.

On the other issue, a unanimous Court held that evidence of the victim's extreme intoxication in this case should have been admitted to support the Defendant's claim that the victim's intoxication constituted a superseding cause of his death. They emphasized that intoxication evidence may not be relevant or admissible in all cases.

They emphasize, however, "That evidence of a victim's intoxication may not be relevant or admissible in all cases. Indeed, the primary focus in a criminal trial remains on the Defendant's conduct. Accordingly, any level of intoxication on the part of a victim is not automatically relevant, and the mere consumption of alcohol by a victim does not automatically amount to a superseding cause or de facto gross negligence."

Instead, under MRE 401, a trial Court must determine whether the evidence tends to make the existence of gross negligence more probably or less probable than it would be without the evidence and, if relevant, whether the evidence is inadmissible under the balancing test of MRE 403.