

THE DAILY RECORD

LAW, REAL ESTATE, FINANCE AND GENERAL INTELLIGENCE SINCE 1908

Legal Currents

To err is homicide

This column, featured every Monday, tackles timely issues important to the local legal community.

BY NICOLE BLACK

Daily Record Columnist



NICOLE BLACK

The New York Court of Appeals recently granted leave to appeal in the matter of *People v. Cabrera*, 40 AD3d 1139, 835 NYS2d 747 (Third Dept. 2007).

In this case, a 17-year-old boy who possessed a junior driver's license was sentenced to one and one-third to four years in state prison for doing what inexperienced teen-age drivers have done since the advent of motor vehicles — exercising poor judgment while driving too fast.

The facts in this case are decidedly tragic. On a clear, dry afternoon in June 2004, the defendant, Brett Cabrera was driving an SUV in Sullivan County on Sackett Lake Road with four teenage passengers when he lost control. It is estimated he was traveling at about 70 miles per hour in a 55-mile-per-hour zone and failed to slow down prior to negotiating a curve for which the recommended speed limit was 40 miles per hour.

As Cabrera attempted to navigate the curve, his vehicle skidded off the roadway and into a telephone pole. Three of his passengers were killed and the other suffered a fractured spine. None were wearing seatbelts. Cabrera was not under the influence of alcohol or drugs at the time of the accident.

Based on the facts, it would be difficult to argue Cabrera's negligence did not cause the heartbreaking deaths of his young friends. He made a terrible miscalculation, which yielded disastrous results. Without a doubt, his civil liability would not be difficult to prove in court.

Civil liability does not necessarily amount to criminal liability, however. The vast majority of errors in judgment simply do not rise to the level of culpable conduct required for a criminal conviction.

At issue in *Cabrera* is whether Cabrera's conduct was criminal. The Sullivan County District Attorney's Office, a

Sullivan County jury and the Appellate Division, Third Department each concluded that it was. He was convicted of three counts of criminally negligent homicide, assault in the third degree, reckless driving and a number of traffic infractions.

In upholding the jury's verdict, the Third Department acknowledged the Court of Appeal's determination that excessive speed alone cannot form the basis for a conviction based on a showing of recklessness or culpable negligence. The court determined, nevertheless, that the verdict was further supported by the convictions for the traffic violations, which

included failure to keep right, driving left of a yellow line and violations of his junior license restrictions (namely that he failed to ensure no more than two passengers were under the age of 21 and that all passengers were wearing seat belts).

Justice Mugglin, writing for the dissent, pointed out the inconsistencies inherent in the majority's decision: "(I)t should be observed that reckless driving, failure to keep right, crossing the double yellow line and speeding convictions all emanate from defendant having operated the vehicle at an excessive speed. Moreover, one questions, under the circumstances presented herein, how defendant could be criminally negligent by failing to perceive his conduct was dangerous while simultaneously driving recklessly because he perceived his conduct to be dangerous, yet ignored the danger."

I only hope the Court of Appeals finds the dissent's rationale to be convincing. Otherwise, I fear that in the future any number of graduating high school classes will include at least one convicted felon, guilty of throwing caution to the wind and naively engaging in the recklessness and daring of youth so familiar to those of us who once were young.

Nicole Black is of counsel to Fiandach & Fiandach. She also publishes a popular New York law blog, Sui Generis, nylawblog.typepad.com and a blog devoted to legal humor, Legal Antics, nylawblog.typepad.com/legalantics.