



April 29, 2013

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Re: HB 2542
Testimony of Joshua Shulman, Esq.

My name is Joshua Shulman. I'm a partner in the law firm of Shulman DuBois. I've been a personal injury attorney in Portland for almost 10 years now. As a personal injury lawyer, I represent injury victims of all types of accidents, but I'm here today specifically to share some of my thoughts and experiences about hit-and-run injuries.

Leaving the Scene Causes Separate Injuries

From experience, I can tell you that hit-and-runs often leave the worst psychological and emotional injuries. It is bad enough to be the victim of an accident caused by another person. Bad enough to have to suffer the physical injuries – the broken bones, damaged organs, disfigurement. But when an injury is caused by momentary inattention – when it's an *accident* – most victims are able to get over the injury psychologically, if not physically.

On the other hand, when a driver accidentally hits someone, and then *purposely* leaves the scene, that can cause additional and separate injuries.

First, the victim's physical injuries may well be exacerbated. The driver could have stayed, called 911, and gotten the victim medical help quickly. The delay that is caused by the driver fleeing the scene instead of staying to help can make the difference between life and death, or between a minor injury and a major injury. When you're lying by the side of the road bleeding, a few minutes can make a big difference.

Even worse, sometimes people who have been run over, and then left lying in the road, can get hit again by another car. If the victim winds up in a ditch by the side of the road at night, it can be hours before someone finds them and gets help.

Then there is the psychological damage. When one human being does this to another human being – leaves her there bleeding in the street, possibly to die there – it can cause psychological damage that will never heal. Because the person who has been hit and then left to die now knows, for an absolute fact, exactly the level of evil that another human being is capable of. The victim now knows this deep in her bones; she will never forget this kind of experience, or what it tells her about other human beings.

It's one thing to be hurt by someone else's carelessness. A momentary lapse of attention, maybe fiddling with the radio while driving, that results in a bicycle rider being hit by a car. That's bad enough. But what's far worse – unimaginable, really – is when the driver of that car, who initially hit a bike rider or pedestrian by accident – when the driver of that car then leaves

the human being he just hit lying in a ditch. On purpose. Leaves her lying there, bleeding, maybe to be hit by another car . . . maybe to die. The person who has been hit and left will never forget this, and her trust in humanity will never fully recover.

People Run for a Reason

Most people leave the scene of an accident for a reason. They've either been drinking or doing drugs, or they have a suspended license, or both. And the way the law is now, it gives an incentive for these people to leave the scene. I hate to say it, but if I were a criminal defense lawyer, and a client called me up and said "I'm really drunk and I just hit someone; what's my best option to get the lightest punishment possible?" I'd have to advise them to run away. Giving this advice would merely be telling the person how the law works. The way the law is now, this is what the law encourages.

DUI penalties are so complex that it is difficult to compare them directly to hit-and-run penalties, but in general, if a person has a prior DUI on their record, and particularly if their license is still suspended from that DUI, it can make a lot of sense for them to leave the scene, if their main goal is to minimize their penalties. Even if they turn themselves in the next day, it will be practically impossible to prove they were drunk, since their blood alcohol level will have returned to normal by then. So then they're charged with a hit-and-run, rather than DUI, and this will often result in a lesser sentence.

When a person successfully leaves the scene, and then gets a good lawyer, it can be very difficult for the prosecutor even to prove that the person was driving. Even if someone gets the license plate number, and the police find the car that way, it's still hard to prove who was driving at the time. Because of this, hit-and-run cases often end up in a plea bargain, with the defendant using the difficulty of proving that the defendant was driving as a very effective bargaining chip. DUI charges, on the other hand, may not generally be plea-bargained pursuant to ORS 813.170.

If penalties for leaving the scene are made more severe, that would give the prosecutor a bargaining chip to balance out the one-sided incentives currently in place. It would help to create the right legal incentives for people to stay on the scene, render aid, and take responsibility.

Driving is a Privilege, Not a Right

"We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty, and the right to drive a car."

That's not how it goes, of course. It's easy to forget this, because we do tend to treat driving as an inalienable right. But in fact, there is no natural right to drive a car. It's not a right at all; it's a privilege. When the State of Oregon gives an Oregonian a driver's license, the State grants a privilege. The State is saying, "yes, we approve of you driving a car; you have passed our test, and we have made a decision to allow and even encourage you to drive by granting you a license to do so." If hitting a person with my car, hard enough to cause "a substantial risk of death, or serious and protracted disfigurement, or protracted impairment of health, or loss of the function of an organ" (ORS 161.015 (8)) – if hitting a person that hard with my car, and then driving away and leaving them to die lying on the road - if that is not enough to cause the State

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of Oregon to say “hmm, maybe this person doesn’t deserve the privilege of driving, at least for three years,” well then what would it take?

That is really the takeaway point I want to leave you all with today. We’re not talking about criminal penalties today. We’re not talking about putting anyone in jail. We’re not talking about taking away anyone’s rights. We’re talking about whom the State of Oregon is going to grant a special privilege to: the privilege of driving. *Does the State of Oregon think that a driver who hits someone, and then can’t even be bothered to call 911 and wait for the ambulance – does the State want to confer the special privilege of driving upon that person?* Or would we prefer to make that person wait (a measly) three years before being allowed this special privilege?

This Bill Has Wide Support

This bill passed the House Judiciary Committee unanimously. It then passed the House Floor Vote unanimously. I hope very much that it will pass the Senate Judiciary with the same level of support.

Conclusion

I support this Bill because I’ve seen first hand how hit-and-run drivers can affect the lives of the people they leave lying in the road. And I hope, as an attorney, that changing the law will help prevent injuries, both physical and psychological, by removing some of the incentive drivers now have to leave the scene after a collision.

This Bill is a small step. I certainly hope it passes, but more than that, I hope it is the beginning of a comprehensive look at Oregon’s hit-and-run laws, and a strengthening of the penalties all around for this crime. Ultimately, I’d like to see license revocations for far longer than the 1 year for injuries and 5 years for death that we currently have, and also even longer than the 3 years for serious injury that this Bill contemplates. HB 2542 is a great start, but I do hope that it’s only the beginning.

Thank you,

/s/ Joshua Shulman

Joshua Shulman

cc: Bridget Budbill, by email only