

# Assessing intoxication

## Court hears testimony regarding driver's condition in fatal crash

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ST. JOSEPH — A preliminary hearing for a Three Oaks man accused of being intoxicated when his vehicle hit and killed a bicyclist will stretch into a third day.

Derek Loraff's blood-alcohol level was 0.073, just below the legal limit of 0.08, about three hours after he struck Peggy Hillman, 71, as she rode her bicycle Aug. 31 on Warren Woods Road near Mill Road in Weesaw Township.

Testimony during the first day of Loraff's hearing Dec. 3 revealed he also had methadone and oxycodone

in his system. Those are opiates. Methadone is sometimes prescribed to people who are addicted to certain narcotics, and oxycodone is a strong pain killer.

The hearing in Berrien County Trial Court Judge Bruce's courtroom was adjourned the first day after Berrien Assistant Prosecutor Cortney O'Malley and Loraff's lawyer, Kevin Banyon, sparred over whether to allow a prosecution witness to testify by telephone about the alcohol and drugs found in Loraff's system.

The judge ruled Tuesday to allow Dr. Benedict Kusliki, director of the toxicology lab at Spectrum Health in Grand Rapids, to testify by video conference. Banyon continued his objection,

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**Lawyer Kevin Banyon (left) speaks in defense of Derek Loraff, 38, of Three Oaks in a preliminary hearing Tuesday in Berrien County Trial Court. Loraff is charged with operating while intoxicated causing the death of Peggy Hillman, 71, of Indianapolis. She was struck and killed Aug. 31 by a vehicle driven by Loraff as she rode her bicycle along Warren Woods Road in Weesaw Township.**

## COURT

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saying he wanted the proposed expert to testify in person.

Kusliki testified that, using a method called retrograde extrapolation, he could offer an opinion as to what Loraff's blood-alcohol level would have been at the time of the accident. He said based on the results of a blood test taken more than three hours later, along with other information such as Loraff's testimony that he'd had two beers at lunch time, Kusliki said the blood-alcohol level at the time of the crash would have been 0.123.

In addition, Kusliki said, the methadone and oxycodone found in Loraff's system could have slowed his reflexes and reaction time, and affected his judgement. He called the level of oxycodone "disconcerting because it is high."

In cross examination by Banyon, Kusliki said he would have a different opinion about Loraff's blood-alcohol level at the time of the crash if he had con-

sidered the results of a preliminary Breathalyzer test believed to have been administered at the accident scene.

O'Malley objected to Banyon's line of questioning, saying no such PBT results have been testified to or admitted as evidence. Nor, she said, are those results admissible.

Banyon argued that they should be allowed to be shared with Kusliki for the purposes of asking whether he would draw a different conclusion as to Loraff's blood-alcohol level at the time of the crash.

Judge Bruce adjourned the hearing, tasking Banyon with calling a witness who could testify to the PBT results and telling O'Malley to be prepared to argue why the results should not be admitted for the purpose of Kusliki's testimony.

O'Malley called an accident reconstructionist Tuesday. Berrien County Sheriff's Lt. Steve Campbell testified that, based on evidence at the scene, the bicyclist would have been upright on the bike when it was hit by the vehicle. He said based on the condition of the vehicle and marks in the road,



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**Berrien County Trial Court Judge Gary Bruce listens to testimony Tuesday from Berrien County Sheriff's Lt. Steve Campbell in a preliminary hearing for Derek Loraff. Loraff is charged with operating while intoxicated causing death.**

the rider would have been thrown up on the hood, hit the windshield, then slid off the windshield and tumbled off and rolled in the road.

He said skid marks indicate the vehicle driver started to hit the brakes about 20 feet from the victim before hitting her from behind.

Previous testimony was that it

was a clear, sunny day and a bicyclist would have been visible in the roadway.

Due to the upcoming holidays and some changes in judge assignments, no date was set to continue the hearing. Meanwhile, Loraff is free on a \$5,000 bond.

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