



THE PLAIN DEALER

3rd teen pleads no contest in crash after boys put deer decoy on road

Friday, August 25, 2006

Associated Press

Kenton, Ohio - A third teen accused of being among a group of boys who put a decoy deer in a country road, causing a car crash that seriously injured two other boys, pleaded no contest Thursday to two charges of vehicular vandalism.

Joshua Lowe, 18, also pleaded no contest to possession of criminal tools and petty theft. Investigators said that the decoy was rigged and painted at Lowe's house and that his vehicle was used to transport it.

Dailyn Campbell, 16, and Jesse Howard, 17, have pleaded no contest to the same charges, and they were sentenced last week to 60 days in juvenile detention. A judge's decision to suspend their sentences until after Kenton High School's football season, which starts Friday, bothered the victims' families and others in the northwest Ohio community.

Investigators said a group of teens stole the decoy from a man's home last November, placed it in the road and watched as drivers swerved to avoid it.

Robert Roby Jr., 19, suffered several broken bones, and his passenger, Dustin Zachariah, 18, of Mount Victory, has brain damage, authorities have said.

Lowe's attorney, Steven Christopher, said the plea was entered against his advice. Christopher told Judge Gary McKinley that a jury likely would not convict Lowe because evidence shows Roby was speeding and had marijuana in his system at the time of the crash. The lawyer said toxicology reports show evidence of marijuana use, and State Highway Patrol records show Roby was traveling between 72 and 79 mph.

Hardin County Prosecutor Brad Bailey said there was no evidence that there was enough marijuana in Roby's system to affect his judgment. He said the state has not disputed that Roby was speeding, but, he argued, it was not the cause of the crash. He said a driver traveling at a legal speed would have had less than a second to respond because the deer was placed 60 feet over the crest of a hill.

Roby's attorney, Keith Karr, said Thursday evening that the patrol report indicated no evidence that his client was driving under the influence and that the patrol did not require any blood testing as a result of the accident.

"The defendants who caused this very tragic accident are now trying to switch the blame over to someone who has had 11 surgeries and whose life has been changed because of their reckless conduct," Karr said. "Where is the word 'responsibility' in all this?"

Bailey said after the hearing that there has been no evidence of marijuana use or speed entered into the record.

"The state's position is it's not relevant," he said.

In a separate hearing, a lawyer for co-defendant Taylor Rogers, 17, argued against a motion to eliminate testimony about marijuana use and speed. Maria Santo said Roby would have avoided the accident if he had not been under the influence and that at least three other vehicles had avoided the decoy.

Bailey argued that any such evidence is inadmissible unless it is a direct cause of the crash.

McKinley ruled that such testimony could not be used at a trial for Rogers unless the defense has an expert witnesses who can testify that the marijuana use or speed helped cause the accident.

© 2006 The Plain Dealer

© 2006 cleveland.com All Rights Reserved.