

DRIVING: 'It looks like I, yeah. I definitely had more...'

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Andrew arrived at the house and spoke to Thomas's fiance for several minutes before realizing Thomas was missing, according to the police affidavit. He only discovered what had happened after police and medics arrived, which records show was at 8:33 p.m.

Andrew didn't speak to police until the next day, making it unclear what his blood alcohol content was at the time of the accident. He told Keizer police during interviews on Sept. 6 and 9 that he had three beers at the bar.

"It looks like I, yeah. I definitely had more alcohol than I remember. And that I was too intoxicated to be in charge of my brother's safety," Andrew would later say to police, according to records.

Modine's lawyer in the current case, Marc Gunn, didn't respond to requests for comment.

The investigation

Katie Suver, a Marion County deputy district attorney, said the 2015 case presented unique factual and legal challenges.

"If Mr. Modine had proceeded to trial and been acquitted he would have received no punishment. It is certainly true that if Mr. Modine had gone to trial and been convicted, he might have still

be in custody," Suver said.

The first issue for prosecutors was proving that Andrew was driving under the influence of alcohol. According to Suver, there was evidence Andrew was intoxicated from alcohol but no DUII investigation was conducted "due to the fact Andrew was not identified as the driver until long after medics and police treated Thomas in the street."

Additionally, while he had a valid Oregon license, Suver said Andrew was vision impaired on his right side.

The second issue concerned whether Andrew's driving was the reason Thomas fell from the vehicle. According to Suver, the 1950s pickup truck had no power steering and a passenger door that didn't properly latch. Thomas Modine was not wearing a seatbelt and was "extremely intoxicated" at the time of the accident, according to Suver.

"The main issue in the criminal case turned on causation - and whether the defendant's driving caused his brother's death or whether his brother just fell out of a vehicle," said Suver.

After a 10-month investigation, Modine was charged with criminally negligent homicide, driving under the influence of intoxicants and failure to perform

duties of driver to injured persons.

A month later, prosecutors offered a deal - plead guilty to all counts and serve three years in prison followed by three years probation. Modine rejected the offer.

Because of the more recent charges, Keizer police said they were directed by Clarkson's office not to comment on the 2015 case - making certain investigation details unclear.

"Unfortunately, there are criminal cases where the evidence is overwhelming and criminal cases where the evidence is scant," Suver said.

The deal

Prosecutors went back to Modine with a new offer in late 2016 - plead guilty to two of the charges and avoid a prison sentence.

Suver said prosecutors met with Debra Daellenback, mother of Thomas and Andrew. She "was opposed to her son Andrew serving jail time," Suver said.

"Ultimately, any plea offer made in a criminal case is an evaluation of the strength of the state's evidence, the likelihood of conviction at trial, the defendant's willingness to take accountability, and the laws governing sentencing," Suver said.

She added that the case "turned on whether the defendant acted with criminal negligence."

Criminal negligence, according to Oregon law, occurs when someone is unaware that their conduct involves a "substantial and unjustifiable risk" that is a "gross deviation" from what a reasonable person would do.

Under Oregon's crime grid, criminally negligent homicide, when related to a DUI, carries a sentence between 61 to 65 months. The charge is also a Class B felony, which carries a maximum of 10 years in prison under Oregon Sentencing Guidelines.

"Had Mr. Modine proceeded to trial and been convicted of criminally negligent homicide, the court could have sentenced him to probation or sentenced him up to 120 months in prison. Both of these outcomes were unlikely," Suver said.

With the most serious charge dropped, Modine still faced up to 40 months in prison.

But under terms of the plea, he wasn't going to prison. Prosecutors instead agreed to 60 months probation, with a stipulation that any probation violation would send Modine to prison for 40 months.

On April 20, 2017, Modine, his lawyer and prosecutors went before Marion County Circuit Court Judge Tracy Prall to present the plea deal during a sentencing hearing.

"It would be fair to say that any violations based on intoxicants or use of drugs would likely be a recommendation of revocation by the state," said Fischer.

Prall emphasized this condition to Modine, saying "something you just know, I cannot drink and drive or use controlled substances. I cannot or I go to prison. That's the message you need to have here."

Modine was also given a chance to speak during the hearing.

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