

September 13, 2007.

No. 42,259-KA

**DISSENT FROM THE DENIAL OF REHEARING
RENDERED ON SEPTEMBER 13, 2007**

COURT OF APPEAL
SECOND CIRCUIT
STATE OF LOUISIANA

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STATE OF LOUISIANA

Plaintiff-Appellee

Versus

MARK STEPHEN COZZETTO

Defendant-Appellant

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Originally appealed from the
First Judicial District Court for the
Parish of Caddo, Louisiana
Trial Court No. 248,142

Honorable Ramona Emanuel, Judge

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LOUISIANA APPELLATE PROJECT
By: G. Paul Marx

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Appellant

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Appellee

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Before STEWART, PEATROSS, DREW, MOORE and LOLLEY, JJ.

DREW, J., dissenting from the denial of rehearing:

The sentences of the learned trial court should be upheld, for these reasons:

- Defendant's combined sentencing exposure on the two charges was imprisonment up to five and one-half years and aggregate fines totaling \$2,500. His sentence was five years with no fine. Accordingly, he did not receive the maximum sentence.
- Neither the state nor the defendant requested a sentencing hearing, but it is apparent from the record that the victim suffered a broken femur near the hip bone, and a shattered knee.
- After being helped out of his car, defendant shoved his rescuers aside and fled the scene, never checking on his seriously-injured victim.
- Defendant's BAC was three to four times the legal limit.
- Defendant has a college degree, so he certainly knew better.
- Even though the prior arrest was pled down to reckless operation, it is hard to imagine a DUI 2nd charge, without a previous DUI being involved.
- To characterize either DUI 2nd matter or reckless operation as a "ticket" certainly deprecates the seriousness of those crimes, each of which is listed in Title 14's LA Criminal Code, not in Title 32.
- If we are, indeed, supposed to give the sentencing court great discretion, this case would be a good place to start.

The record adequately supports the trial court's sentences, so I must respectfully dissent to the denial of the rehearing application.