

Vermont Legislative Council

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MEMORANDUM

To: House Committee on Judiciary

From: Erik FitzPatrick

Date: February 27, 2014

Subject: H.501; DUI/DUID; Meaning of term “under the influence”

23 V.S.A. § 1201(a)(2) prohibits operating a motor vehicle when a person is “under the influence” of alcohol. As it has interpreted the phrase “under the influence” over the years the Vermont Supreme Court has consistently said that these words mean that there was some degree of impairment to the person’s physical or mental function.

“Section 1201(a)(2) is satisfied,” the Court has said many times, “if (the) defendant was under the influence of intoxicating liquor to the slightest degree.” *State v. Frigault*, 151 Vt. 537, 538 (1989). The slightest degree standard “has been used since 1933 and reaffirmed in the caselaw since[.]” *State v. Schmitt*, 150 Vt. 503, 508 (1988) citing *State v. Storrs*, 105 Vt. 180, 185 (1933). In *Storrs*, the Court provided a detailed definition of the meaning of the words “under the influence,” explaining that “where one, by reason of his indulgence in intoxicating liquor, has ceased to retain full control of his faculties of mind and body, he is under the influence of such liquor, and the extent to which he has lost the use of his mental and physical powers is not material upon this question.” 105 Vt. at 185. The concept that “undue influence” means at least the slightest degree of physical or mental impairment appears to have remained the law since.

In 1988 the Court approved a more updated definition of “under the influence” in *Schmitt*. In that case, the Court approved a jury instruction that defined “under the influence” as follows: “Under the influence occurs when a person’s full mental or physical faculties, his mental or physical ability, are diminished, impaired, or affected in the slightest degree by intoxicating liquor.” *Schmitt*, 150 Vt. 508.

The Model Jury Instructions of the Vermont Bar Association include a similar definition. The instructions provide: “A person is under the influence of intoxicating liquor if the person’s full mental or physical abilities are impaired or affected in the slightest degree by intoxicating liquor. An influence of intoxicating liquor can be proven by evidence of observable behavior, indicating that (the defendant) had consumed alcohol and ceased to retain full control, even to the slightest degree, over the faculties of mind and body.”