



The YELLOW LIGHT LEGAL UPDATE

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As a new feature of *The Yellow Light Legal Update*, the case names in blue text will be set up as hyperlinks on the PDF version that will go directly to the opinions.

Federal Case Law United States Supreme Court

Case Name: *Melendez-Diaz v. Massachusetts*

Luis Melendez-Diaz was arrested while making a cocaine sale in a parking lot in Massachusetts. At trial, bags of the cocaine alleged to have been distributed by Melendez-Diaz were introduced into evidence along with drug analysis certificates prepared by the lab technician who analyzed the drugs and identified them as cocaine. A jury convicted Melendez-Diaz of distributing and trafficking cocaine in violation of Massachusetts law.

Melendez-Diaz appealed, arguing that the State's introduction of the drug analysis certificates violated his Sixth Amendment right to confront witnesses against him under the Court's ruling in *Crawford v. Washington*, 541 U.S. 36 (2004). *Crawford* held that so-called "testimonial" evidence cannot be introduced at trial unless the defendant has an opportunity to cross-examine the witness providing the evidence. Melendez-Diaz characterized the laboratory analysis as testimonial and argued that *Crawford* required the laboratory technician to testify on the results. The State argued that Massachusetts' courts previously held that laboratory reports were not testimonial.

The Massachusetts Court of Appeals rejected Melendez-Diaz's claims in an unpublished opinion, referring to them in

a short footnote as "without merit." The Massachusetts Supreme Court also denied his appeal. The United States Supreme Court granted certiorari.

The issue is whether a state forensic analyst's laboratory report prepared for use in a criminal prosecution is "testimonial" evidence subject to the demands of the Sixth Amendment's Confrontation Clause as set forth in *Crawford v. Washington*.

The Supreme Court held that a state forensic analyst's laboratory report that is prepared for use in a criminal prosecution is subject to the demands of the Sixth Amendment's Confrontation Clause. With Justice Antonin G. Scalia

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writing for the majority and joined by Justices John Paul Stevens, David H. Souter, Clarence Thomas, and Ruth Bader Ginsburg, the Court reasoned that the laboratory reports constitute affidavits which fall within the "core class of testimonial statements" covered by the Confrontation Clause. Therefore, when Mr. Melendez-Diaz was not allowed to confront the persons



who created the laboratory reports used in testimony at his trial, his Sixth Amendment right was violated.

Justice Thomas wrote a separate concurring opinion, emphasizing that he thought the Confrontation Clause was only implicated by statements made outside the courtroom when they are part of "formalized testimonial materials," like the sworn affidavits used in the Massachusetts lab reports.

Justice Anthony M. Kennedy dissented and was joined by Chief Justice John G. Roberts, and Justices Stephen G. Breyer and Samuel A. Alito. He criticized the majority for dispensing with the long held rule that scientific analysis could be introduced into evidence without testimony from the analyst who produced it.

[Melendez-Diaz v. Massachusetts](#), case no. 07-591, released June 25, 2009.

United States Court of Appeals Sixth Circuit

An officer assigned to a public housing complex noticed defendant and two companions sitting in a parked car outside the complex. The officer parked his vehicle in front of defendant's vehicle so defendant could not leave. It was at this time the officer approached the defendant.

As a result of the encounter, the officer searched the defendant's vehicle and found a firearm with no serial number under the driver's seat of the car. The officer arrested him and he was charged with possession of a firearm.

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The Court ruled that the officer's blocking of the defendant's car to determine the identity of the occupants was a warrantless *Terry* seizure. When the officer decided to block the defendant's vehicle with his marked patrol vehicle, a reasonable person in defendant's position would have not felt free to leave.

The Court held that based on the totality of the circumstances, the officer did not have reasonable suspicion that criminal activity was occurring, and therefore, the *Terry* stop was improper. Since the initial *Terry* stop was unlawful, the evidence resulting from the subsequent search, including the bullets and firearm, had to be suppressed as the "fruit of the poisonous tree."

Lastly, the Court stated that it did not appear an exception to the "fruits" analysis such as the "independent-source" rule or the "inevitable-discovery" doctrine applied to make suppression unwarranted.

The case was reversed and remanded.

United States v. See, No. 08-3484, released July 24, 2009.

PUBLISHED CASES

The Michigan Court of Appeals was presented with a case that involved the testimony of non-victim witnesses by way of two-way interactive video technology. The issue before the Court was whether this use of such two-way interactive video testimony violated the defendant's confrontation rights at trial. This issue was a question of first impression in Michigan.

More specifically, Defendant appealed as of right jury trial convictions of first-degree criminal sexual conduct (CSC) with a person under the age of 13, and possession of a firearm during the commission of a felony. The trial court sentenced the defendant as an habitual offender, fourth offense to life imprisonment for his CSC convictions

and two years imprisonment for his felony-firearm conviction. Dr. Vincent Palusci and Dr. Rodney Wolfarth testified on behalf of the People via two-way interactive video technology at the trial.

The Michigan Court of Appeals noted that the United States Supreme Court and the Michigan Court of Appeals have recognized that the right of the accused to meet witnesses face-to-face is not absolute and the Confrontation Clause simply "reflects a preference for face-to-face confrontation at trial." See, *Maryland v. Craig*, 497 US 836 (1990); *People v. Pesquera*, 244 Mich. App. 305 (2001). This preference "must occasionally give way to considerations of public policy and the necessities of the case." the case."

In *Craig*, supra, the United States Supreme Court held that allowing the testimony of a child witness, who was alleged to be a victim of abuse, via one-way closed circuit television did not violate the defendant's right to confrontation because the procedure adequately protected the other elements of the Confrontation clause: the oath, the cross-examination, and the ability of the trier of fact to view the demeanor of the witness. The *Craig* Court however, stated that this procedure may only be used if the prosecution shows it is "necessary to further an important state issue." Therefore, if the prosecution wishes to have a child testify in such a manner, the trial court must hear evidence and make a case-specific finding that the procedure is necessary.

Like the United States Supreme Court, the Michigan Courts have recognized that presenting testimony over closed-circuit television did not violate the defendant's right to confrontation. *Pesquera*, supra.

The *Buie* Court adopted the *Craig* test to determine whether a trial court infringes on a defendant's right to confrontation when it allows witness testimony to be taken through two-way interactive video technology. The Court ruled that the trial court must hear evidence and



make case-specific findings that the procedure is necessary to further a public policy or state interest important enough to outweigh the defendant's constitutional right to confrontation and that it preserves all of the other elements of the Confrontation Clause.

The Court concluded that "Given the absence of record evidence or any findings by the trial court regarding the necessity of the video-conferencing procedure implemented in this case, we cannot determine whether the defendant's constitutional right of confrontation was violated." The Court remanded the case back to the lower court to hear evidence and make case specific findings as to whether the procedure was necessary to further public policy or a state interest important enough to outweigh defendant's constitutional rights. Further, the Court held it was not proper for the lower court to take the witnesses' testimony via two-way interactive video technology pursuant to MCR 6.006(C)(2).

The Court remanded for further proceedings consistent with their opinion and the Court's accompanying order.

People v. Buie, case no. 278732, released August 25, 2009.

Editor's Note: The Prosecutor is going to seek review in the Supreme Court. The *Buie* decision should not have any affect on cases that involve the testimony of witnesses at a preliminary examination or evidentiary hearing (i.e. *Daubert*), or any other miscellaneous hearings, as the defendant's right of confrontation does not apply at these hearings. Additionally, please note that pursuant to MCLA 766.11a and MCR 6.006(B)(C), it is strongly encouraged that video technology be utilized where it is available, especially if it involves the testimony of the MSP Laboratory Experts.

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The defendant appealed as of right his jury trial convictions of operating a motor vehicle while intoxicated, third offense, operating a motor vehicle while license suspended, and possession of an open alcohol container in a motor vehicle.

This case arises from a police stop of the defendant while he was driving his motor home on January 15, 2007 in the snow. While traveling along I-75 southbound, Officer Chamberlain noticed tire tracks that were traveling from the extreme right hand to the extreme left hand side of the road, covering both lanes of travel. Another officer, Officer Williams followed the tracks off I-75 and then continued to follow the tracks in order to catch up with the vehicle that was leaving them to determine why that vehicle was weaving in the roadway. Officer Williams caught up with the defendant's vehicle, when he observed it halfway across the center of the roadway.

At his first contact with the defendant, Officer Williams smelled intoxicants, observed slurred speech, and also observed the defendant perform poorly on his sobriety tests. Officer Williams testified that he was aware that a diabetic may sometimes appear intoxicated based on blood sugar issues and that he was aware the defendant was diabetic because the defendant told him so.

Later during the stop, Officers Williams and Chamberlain entered defendant's motor home after the defendant said he was cold. The officers noticed a brown paper bag directly to the right of the driver's seat with a six-pack of beer inside it. There were four empty bottles, while the fifth bottle was three quarters empty, and the sixth was unopened. There were also beer cans in the sink that defendant claimed were his daughter's from a previous night. It was at this time the officers arrested the defendant.

A sample of the defendant's blood was taken. The blood test revealed that defendant's blood alcohol content was 0.13 grams per one hundred milliliters of blood.

The defendant filed a motion to suppress his blood sample and the blood test results, arguing that his Fourth Amendment rights were violated because his consent to the blood draw was the product of coercion when the police incorrectly told him that the implied consent statute still applied to him even though he had diabetes. The trial court denied the defendant's motion to suppress, concluding that although defendant had been improperly informed about the consequences of his refusal to take



a blood test because he was a diabetic, his alcohol content would have been inevitably discovered had the officer followed the correct procedure.

The court of appeals disagreed with the trial court's ruling. The court noted that Officer Williams was unaware of the diabetes exception for a blood withdrawal under the implied consent statute. Therefore, Officer Williams erroneously instructed the defendant that if he refused to provide a blood sample, the license suspension consequences under MCL 257.625a(6) (b)(v) would apply. Based on this incorrect information, the defendant consented to providing a blood sample. The police did not obtain a search warrant nor take any steps to do so.

The phrase “serious impairment of body function” is defined in the Motor Vehicle Code and includes several specific injuries, one of which is “serious bone fracture.”

As to the issue of inevitable discovery, the court stated that “based on the facts here, there was an independent legal means to obtain the evidence by securing a search warrant. To allow a warrantless search merely because probable cause exists would allow the inevitable discovery doctrine to act as a warrant exception that engulfs the warrant requirement.” The Court concluded that, because no application of the inevitable discovery doctrine saves the warrantless search, the trial court should have suppressed the evidence of the defendant's blood alcohol.

The case was reversed and remanded for entry of an order vacating defendant's OWI conviction under the theory that he operated a vehicle with a bodily alcohol content of 0.08% or more.

People v. Hyde, case no. 282782, released September 1, 2009.



Unpublished Cases

(An unpublished opinion is not binding as precedent but may have persuasive value in court.)

The defendant was convicted of two counts of involuntary manslaughter with a motor vehicle and one count of felonious driving. The vehicle driven by the defendant collided with another vehicle with three occupants, killing two and seriously injuring the third. Two witnesses saw defendant's car traveling at high rates of speed on the day of the crash. The driver of another vehicle saw defendant's car “traveling kind of recklessly or at a high rate of speed,” estimating it was going 60 to 65 mph in a 55 mph zone.

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An off-duty sheriff's deputy saw defendant's car drive by his home twice at high rates of speed, exceeding 90 mph. He was so concerned he tried to follow defendant's car, and he arrived at the crash scene four or five minutes after seeing the car pass his home the second time. Defendant's passengers testified the car ride only lasted 10 to 15 minutes.

The defendant argued that the testimony presented at trial by witnesses concerning the defendant's vehicle traveling well beyond the speed limit was reversible error because such testimony constituted prior bad acts in contravention of Michigan Rules of Evidence 404(b). The court of appeals disagreed.

The court stated that the witnesses, as lay witnesses, were competent to testify about their opinions concerning the speed of defendant's car. The defendant's conduct was relevant to one of the elements of the charged offense of involuntary manslaughter, i.e. whether his conduct constituted ordinary negligence or gross negligence. The jury was entitled to have facts about defendant's driving on another road "as an integral part of the events that ultimately played out minutes later at the intersection" where the crash occurred.

The Court of Appeals held that the trial court did not abuse its discretion in admitting the two witnesses' testimony about defendant's driving on the other road. The defendant offered no evidence to show otherwise that the prior bad acts contravened Michigan Rules of Evidence 404(b).

The case was affirmed. *People v. Morrison*, case no. 284218, released August 6, 2009.

Defendant was charged with possession with intent to deliver less than 50 grams of cocaine, MCL 333.7401(2)(a)(iv).

On November 21, 2006, at approximately 10:30 p.m. a police officer notices a vehicle on the highway with a license plate from another state. He was unable to run a check on the plate because a frame surrounding the plate partially obscured the name of the issuing state. When he moved his marked patrol vehicle closer, the car turned right onto another road in a manner that led the officer to believe that the driver was attempting to evade him. The officer still could not see the state on the license plate. He initiated a traffic stop for further investigation.

Defendant stopped his car and ultimately consented to a search of the vehicle during which two baggies of cocaine were found. The defendant filed a motion to suppress the evidence, arguing that the police lacked probable cause to conduct the traffic stop that led to the discovery of the cocaine. The trial court agreed, granted defendant's motion, and dismissed the charge. The prosecution appeals as of right, asserting that defendant's failure to use his turn signal before changing lanes provided probable cause for the traffic stop.

The Court of Appeals agreed with the prosecutor. In the present case, the police officer conducted a traffic stop because, in his view from the patrol car, the license plate was obstructed. However, the officer also noted that when he was attempting to view the plate, the vehicle "abruptly" changed lanes off the road. The Court noted that this abrupt turn as recorded on the videotape demonstrated that a civil infraction occurred because defendant turned his vehicle off the roadway without using his turn signal, MCL 257.648.

The Court held that the police officer properly stopped the automobile for violation of a civil infraction, MCL 257.648. Consequently, defendant was not unlawfully detained when asked for his consent to search, and consent was not challenged by the defense. Therefore, the trial court erred in granting the defendant's motion to suppress evidence and in dismissing the charge because his failure to use his turn signal before changing lanes provided probable cause for the traffic stop.

The case was reversed. *People v. Williams*, case no. 282100, released August 6, 2009.



Consult Your Prosecutor Before Adopting Practices Suggested by Reports in this Article.

The statutes and court decisions in this publication are reported to help you keep up with trends in the law. Discuss your practices that relate to these statutes and cases with your commanding officers, police legal advisors, and the prosecuting attorney before changing your practices in reliance on a reported court decision or legislative change.



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