



April 2003

Volume 1, Issue 4

# The Yellow Light Legal Update

## Case Law Alert !!!

### Published

The district and circuit courts abused their discretion in finding an officer failed to identify himself properly within the meaning of M.C.L.A. 257.311 and that there was insufficient evidence to bind defendant over to circuit court on the pending charge of resisting and obstructing an officer during an investigation of an outstanding felony warrant. The evidence indicated the officer was in uniform and activated the emergency equipment in his fully marked sheriff's department vehicle when he approached the defendant. There was undisputed testimony the officer heard defendant tell the person on the other end of his cell phone conversation "the police are out here." Further, there was sufficient evidence for the officer to effectuate the traffic stop of defendant's vehicle because there was a reasonable suspicion defendant had committed a crime where the officer was aware there was a felony warrant for his arrest and his description was in the warrant entry. Re-

versed and remanded. *People v McKinley*, CA No. 236310, released January 14, 2003.

The district court properly denied the defendants' motions to suppress evidence recovered from their vehicle. The officers had probable cause to stop the vehicle after observing a parking violation and following the vehicle for about a mile. The court disagreed with the district court's finding that a parking violation, by itself, did not constitute adequate grounds to stop the vehicle because it was not a traffic violation. The placement of defendants' vehicle at a 45-degree angle to the curb, facing the wrong direction, clearly violated Michigan's parking regulations. Based on Michigan statutory language, an officer can effect a stop based upon a driver's failure to comply with Michigan's parking regulations, even if the vehicle is no longer parked. Thus, an antecedent parking violation can conceivably form the basis for probable cause



to stop a vehicle. The court also concluded the stop one mile from the parked location was reasonable under the circumstances. The evidence recovered in the course of the stop was properly admitted. Affirmed. *United States v Copeland*, 6th Circuit Court of Appeals, Case No. 01-1005, released February 25, 2003.

### Unpublished

*(An unpublished opinion is not binding as precedent but may have persuasive value in court.)*

Giving a jury instruction on a cognate lesser included offense is prohibited, and in any event, defendant was not entitled to a jury instruction on negligent homicide in his trial on an ORV/OUIL causing death charge. He admitted he was operating the ORV at 40 to 45 mph with the decedent child as a passenger and he was intoxicated when the accident occurred. The evidence showed the child died from injuries suffered when he was thrown to the ground after the ORV collided with a car on a

The Yellow Light Legal Update is an addition to The Green Light News. With this insert, you can keep a notebook for just the traffic safety cases.

public highway. Defendant's statement constituted evidence he voluntarily operated the ORV while he was intoxicated. This evidence created an irrebuttable presumption of gross negligence and constituted proof of the distinguishing element between ORV/OUIL causing death and negligent homicide. Defendant's convictions were affirmed. *People v Degrandchamp*, CA No. 235549, released January 21, 2003.

**D**efendant was a passenger in a car with a cracked windshield. As the officer approached the car, he saw the defendant reach down toward the floor. Once beside it, the officer looked through the window and saw a handgun protruding from beneath the passenger seat. The trial court ruled that the officer did not have probable cause to stop the vehicle. The court of appeals reversed and held that the car was properly stopped for a cracked windshield. "On reasonable grounds shown, an officer may stop and inspect a vehicle for an equipment violation." The dismissal was reversed. *People v Fisher*, CA No. 237271, released on February 18, 2003.

**I**n a fourth-degree fleeing and eluding of a police officer, the trial court properly allowed the prosecution to use prior bad acts

to prove identity, plan or scheme. Officers attempted to stop defendant after he passed the patrol car at a high rate of speed. After a chase, the defendant abandoned the jeep in a field and fled on foot. A short time later, defendant was found in the area, his clothes muddy and fresh scratches on his arms and legs. The prosecution requested permission to use a similar prior incident with the defendant and fleeing and eluding. The trial court approved the request and the defendant was convicted. The Court of Appeals found that the prior act had special qualities that tended to prove defendant's identity in the current charge. It affirmed the conviction. *People v McGinn*, CA No. 237621, released February 18, 2003.

**D**efendant was convicted of operating a vehicle while his license was revoked causing death. On appeal he argued that the statute was a strict liability statute and thus unconstitutional. The Court of Appeals found that MCL 257.904(4) is a general intent crime and that the required elements are that the defendant voluntarily drove a motor vehicle despite knowing that he was not entitled to do so. The statute was found to be constitutional. Defendant's conviction was

affirmed. *People v Smith*, CA No. 229137, released February 25, 2003.

**T**he court held since nothing in the two prior tribal court proceedings cast any serious doubt on the veracity or fairness of process of defendant's prior convictions, the use of the prior tribal/foreign convictions for enhancement of the OUIL charge under these circumstances was appropriate. Defendant had no prior OUIL convictions in Michigan courts, but he had two OUIL convictions in a tribal court. The prosecution sought to enhance the charge from a drunk driving misdemeanor to felony drunk driving, OUIL third. The



trial court held defendant was denied sufficient due process because indigent defendants in the tribal system are not entitled to the appointment of counsel, and quashed the information. The court concluded defendant did not establish he was prejudiced by the denial of appointed counsel in the tribal court because he failed to establish his indigency at the time he offered his tribal court guilty pleas. Reversed and remanded. *People v Wemigwans*, CA No. 239736, released March 4, 2003.

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

*The statutes and court decisions in this article 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.*

This material was developed through a project funded by the Michigan Office of Highway Safety Planning and the U.S. Department of Transportation.