



The Yellow Light Legal Update

Special Cases of Interest

- A person charged with second-degree murder following an auto-related death does not automatically get an instruction for negligent homicide. *People v Weeder*.
- Defendant, who was found unconscious in his car with a beer can between his legs and parked on the side of the road, was properly convicted for OWI. *People v Solomonson*.
- Conviction for involuntary manslaughter of an adult who furnished beer to minors affirmed. *Commonwealth v McCloskey*.

Statute And Case Law Alert !!!

Published Cases

Michigan Supreme Court

Considering whether a driver charged with second-degree murder following an auto-related death must receive a negligent homicide instruction, the court overruled *McIntosh* and remanded to the Court of Appeals for further review. While intoxicated, defendant fled from a police officer who was attempting to effectuate a traffic stop and eventually struck another vehicle, killing its two occupants. The court found MCL 750.325 clear and unambiguous, and held it did not apply in this case because for the statute to apply, a defendant must be charged with manslaughter committed



in connection with the operation of a vehicle. Here, defendant was not charged with manslaughter, but with second-degree murder. The Court of Appeals decision reversing defendant's manslaughter convictions was vacated. On remand, the Court of Appeals is to determine if negligent homicide is an inferior, or necessarily included lesser, offense of the charged offense, second-degree murder, and if there is the necessary evidentiary support for an instruction on negligent homicide.

The dissenting justices would not have decided the case by an opinion *per curiam* and preferred to grant leave to appeal so they might avail

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New Statutes

2004 PA 19 (House Bill 4887) MCL 257.653a requires that you must move over when a patrol car is stopped along the highway with its lights activated. This has now been expanded to include tow trucks, otherwise called "road service vehicles". This law goes into effect on June 2, 2004.

2004 PA 20 (Senate Bill 681) states: On motion of either party, the magistrate may permit the testimony of an expert witness or, upon a showing of good cause, any witness to be conducted by means of telephonic, voice, or video conferencing." This law went into effect on March 4, 2004.

Editor's Note: Keep this in mind when you have experts, including toxicology experts,

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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.

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themselves of full briefing and argument by the parties. In addition, they would have limited the Court of Appeals reconsideration on remand to whether there was the necessary evidentiary support for the negligent homicide instruction. *People v Weeder*, case no. 120107, released February 4, 2004.

Unpublished Cases

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

Defendant was found unconscious in the driver's seat of a Chevy Cavalier station wagon with an open can of beer between his legs at 3:45 a.m. The car was parked just outside the white fog lines, but still on the road pavement. The engine was turned off with the keys in the ignition and the engine still warm. There were five full cans of cold beer in the passenger seat and an empty can in the back. Defendant was arrested for OWI. His blood test results were .21 and .22. Defendant argued that there was insufficient evidence to support his conviction, that he was not "operating" the parked car when the police found him unconscious in the driver's seat, and there was reasonable doubt he drove to that location while intoxicated. The prosecutor did not claim the evidence established defendant was operating the vehicle at the point

the police found him unconscious or the police found defendant attempting to operate a vehicle while intoxicated, but argued the evidence at trial presented a compelling circumstantial case defendant had driven while intoxicated to the location where the police found him.

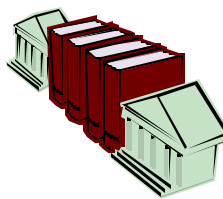
Although defense counsel argued someone else drove defendant to where the police found him, he presented no evidence at trial to support that theory. The conviction was affirmed. *People v Solomonson*, case No. 245178, released march 4, 2004.

Petitioner did not meet his burden of demonstrating entitlement to an unrestricted driver's license by clear and convincing evidence, and the trial court erred in concluding it could waive requirements imposed by respondent for obtaining a driver's license reinstatement. The respondent's hearing officer correctly concluded petitioner, who was appealing for a full, unrestricted driver's license, failed to provide clear and convincing evidence to justify granting the unrestricted driver's license because he did not submit a final report from the interlock company verifying the device was installed on his vehicle as ordered until the order was set aside by the trial court. Petitioner appealed the denial of his request for an

unrestricted license to the trial court, which granted his motion for the unrestricted license, stating the interlock requirement made no sense. The trial court's review of the hearing officer's decision was limited to the criteria in MCL 257.323(6) (in effect at the time). The respondent has rule-making authority and the hearing

officer's final report requiring the interlock was mandatory. The fact the requirement "makes no sense" to the trial court was not the appropriate inquiry or standard of review. Petitioner should have known he was required to produce the documentation in order to obtain the relief he requested. The interlock device was the only objective method for the hearing officer to determine whether petitioner's claim of sobriety was accurate. The trial court decision was reversed. *Beaman v Secretary of State*, case No. 245036, released February 19, 2004.

There was sufficient evidence to support defendant's OUIL third offense conviction. Defendant claimed the prosecution failed to show he operated the vehicle while intoxicated. A witness saw defendant's truck proceeding without headlights at approximately five miles an hour as it approached an exit ramp. Defendant admitted he drove the vehicle to the location before it ran out of gas. Approximately five minutes after receiving the report of the slow moving vehicle, the



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police found defendant sitting behind the wheel of the truck. His eyes were glassy, his speech was slurred, he smelled of alcohol, and refused to perform field sobriety tests. The trial court rejected defendant's claim he consumed alcohol only after the truck ran out of gas and found that, based on the evidence defendant drove very slowly and without headlights to the exit ramp and exhibited several signs of alcohol consumption shortly thereafter, he had consumed alcohol before the truck ran out of gas, and had operated the truck while under the influence of alcohol. The conviction was affirmed. *People v Jarvis*, case no. 244273, released February 17, 2004.



by police officers was sufficient to justify a conviction for fleeing and eluding. Defendant's conviction and sentence were affirmed, but the case was remanded for correction of the PSIR. *People v Stevens*, case no. 243082, released February 3, 2004.

Concluding the facts established a level of conduct beyond drunk driving, the court rejected defendant's argument the prosecution produced insufficient evidence to support his second-degree murder conviction. Defendant had a blood alcohol level well over the legal limit, knowingly drove with a license that had been suspended for four years, was speeding down the town main thoroughfare, and later passed two semi-tractor trailers on a two-lane road as they climbed a large hill in a no-passing zone. He lived near the scene of the accident and thus, was familiar with the road terrain. There was evidence he was speeding over 100 mph when he drove down a steep decline in a hilly area blocking the view of vehicles driving in the opposite direction, and police accident reconstruction experts opined immediately after this, he lost control of his vehicle and crashed into the car the decedent was driving in the opposite direction. The evidence was sufficient to permit a reasonable inference defendant acted in obvious disregard of life-endangering consequences. The second-degree murder and OUIL,

third offense convictions were affirmed, and pursuant to the prosecution's request, the OUIL causing death and driving on a suspended or revoked license causing death convictions were vacated. *People v Sondey*, case no. 242145, released December 23, 2003.

Federal Cases

The Phelps County, Missouri Sheriff's Department was participating in a drug interdiction program. As part of the program, the officers placed signs on Interstate 44 reading "Drug Enforcement Checkpoint Ahead, One Fourth Mile" and "Drug Dogs in Use." The signs were deceptive as there was no checkpoint. Shortly before the signs was an exit which was in a remote area with little reason for motorists to take unless they were residents of the area. Defendant exited at the particular location, ran a stop sign and was stopped by the deputies for the traffic violation. There was a motion to suppress the seventeen kilograms of cocaine found in defendant's tractor trailer. The district court did not err in denying the motion to suppress since the use of deceptive signs concerning a non-existent drug enforcement checkpoint did not make the traffic stop illegal. The defendant was lawfully stopped after committing a traffic violation and his consent to search was voluntary. The conviction



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was affirmed. *United States v Martinez*, no. 03-2445, 8th Circuit, released March 02, 2004

Defendant claimed the traffic stop where drugs were found in the gas tank of the car he was driving was illegal because (1) the officer's initial stop of his car was based upon his suspicion defendant was involved in an illegal drug trafficking, not on an alleged speeding violation, (2) the officer lacked probable cause to justify the stop because defendant had not been speeding, (3) the stop was not reasonably related in scope and duration to the initial purpose of the stop, and (4) the officer exceeded the bounds of the initial stop by asking defendant if he possessed any illegal contraband. The court concluded the initial vehicle stop was reasonable where the officer had probable cause to believe defendant violated the speed limit, the stop was reasonably related in scope and purpose where the officer believed the rental car defendant was driving may have been stolen and did a computer check, and the officer did not exceed the bounds of the initial stop by asking defendant if he possessed any illegal contraband because there was additional justification supporting the questioning where the officer had not completed the citation and had not received the computer check on the license plate. Further, the search of defendant's gas tank where the

drugs were found did not exceed the scope of defendant's consent to the search. The conviction was affirmed. *United States v. Garrido-Santana*, case no. 02-6076, Sixth Circuit, released February 20, 2004.

Out-of-State Cases

Defendant's daughters threw a keg party in the basement of the family house. More than 40 people attended the party, all under the age of 21. Defendant was upstairs during the party, but knew of the underage drinking. She had helped get ice and blankets for the kegs and chatted with some of the teenagers. The evidence established that defendant's house was a place where the teenagers drank routinely. After the party, a 19 year old left in his SUV. He gave a ride to three other teenagers. The teenager was in a collision and three of the four occupants in the SUV were killed. Defendant was charged with involuntary manslaughter. The Pennsylvania court upheld the conviction noting that her conduct went beyond a mere failure to supervise a teenage party in her home. Her act of furnishing alcohol to the minors, including the driver, started the chain of causation that led to the fatalities. The occurrence of a fatal crash following a teenager's unlimited consumption of alcohol at an unsupervised beer party was neither remote nor attenuated. The conviction was affirmed. *Commonwealth v McCloskey*, 2003 WL 22462544 (Pa. Super.)



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testifying. This also applies to all witnesses upon a showing of good cause.

2004 PA 25 (Senate Bill 842) establishes the new crime of illegal possession of a portable signal preemption device. (New MCL Cite: 257.616a) If a person possesses the device, it is a 90-day misdemeanor. If it is used, then it is a 2-year felony. If there is a crash, it is a 5-year felony, and if an injury resulting in a serious impairment occurs, it is a 10-year felony. If a death results because of the use of the device it is a 15-year felony. This law goes into effect June 14, 2004.

Enrolled House Bill 4308. In response to the public's outcry over the Driver Responsibility Fees for a driver not having proof of insurance, the legislature passed 4308. The bill changes how the act deals with citations for no proof of insurance. If a person appears in court **before** the appearance date on the citation, with proof of insurance, then the ticket is waived and no abstract is sent to the Secretary of State (SOS). However, if the person does not appear before the appearance date, and they are found responsible, then the court sends an abstract to the SOS. The SOS will then assess a fee of \$200 for two consecutive years instead of the \$150 under the previous law. This bill has not yet been signed by the Governor.

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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