



The Yellow Light Legal Update

Case Law Alert !!!

Published

Defendant claimed the evidence was insufficient because the pursuit lasted only 20 seconds, he took no evasive maneuvers, and he only slightly exceeded the speed limit. The court held there was no requirement defendant's speed must exceed a certain level or the speeding occur over a long distance. Based on the speeding, a sharp turn, and defendant's running after exiting the vehicle, there was circumstantial evidence defendant was trying to flee and avoid capture while he was in his vehicle. *People v Grayer*, CA No. 229267, July 26, 2002

Defendant should have been tried under the general attempt statute rather than the OUIL/UBAL and DWLS statutes because those statutes do not include attempt to commit the crimes. The court concluded if the Legislature had intended to include the attempt to commit OUIL/UBAL, or the attempt to commit DWLS, it could have added the words "or attempt to operate" to the respective statutes. The trial court, nonetheless, had jurisdiction because the information alleged the essential elements of both crimes. However, the evidence was insufficient to support defendant's convictions because it did not support the

conclusion he was intending to "operate" his truck, as that term was defined in *People v Wood*, 450 Mich 399 (1995). There was no evidence defendant's truck was in motion when the police discovered him. Further, the lack of motion was due to the truck's transmission being in either park or neutral, as defendant slept with the engine running in a golf course parking lot. Defendant's convictions and sentences were vacated. *People v Burton*, CA No. 226530, July 5, 2002.

Unpublished



(An unpublished opinion is not binding as precedent but may have persuasive value in court.)

The trial court abused its discretion in excluding the testimony of defendant's pharmacology expert about the effects of cocaine on the body, and particularly the effect on pupillary dilation in response to light, and the synergistic effects of alcohol combined with cocaine. Defendant was convicted of negligent homicide as the result of a fatal motor vehicle-motorcycle accident in which defendant, driving a SUV, began to make a left turn when the decedent's motorcycle in the oncoming lane struck the vehicle. There was no evidence the

motorcycle driver was driving too fast or erratically, but defendant could produce a toxicology report showing the presence of small amounts of alcohol and cocaine in the decedent's system and expert testimony showed these substances affect the body in a manner that might have impaired the decedent's ability to stop or otherwise avoid the accident. According to the court, this evidence was relevant and the jury was denied the opportunity to hear whether the decedent's death was caused, *inter alia*, by his own inability to react in a timely fashion. The case was reversed and remanded for a new trial. *People v Hale*, CA No. 229607, July 26, 2002.

Defendant was convicted of Fleeing and Eluding 3rd Degree. During the trial, a videotape reenactment of the police chase route, and the patrol car was admitted. The officer testified that the videotape "fairly and accurately" depicted the police Camaro as it appeared looking out the back of another car, that it showed the route that the officer testified to, that it depicted the lights and sirens as testified to, but that it did not show the speeds. The court of appeals upheld the tape being admitted into evidence. *People v Petrocca*, CA No. 229443, July 16, 2002.

(Continued on page 2)

In this new addition to the *Green Light News*, you will find the **Case Law Alert**. With this one page insert, you can keep a notebook for just the traffic safety cases. *(Of course, I've now run out of traffic light colors for anything new.)*

My thanks to my assistant, Carol Goodearl, for the suggestion.

(Continued from page 1)

Defendant was convicted of Operating a Motor Vehicle Under the Influence Causing Death. On appeal, the defendant argued that the trial court improperly instructed the jury on the lesser offense of operating while impaired contending the information only charged him with OUIL/UBAL Causing Death. The court of appeals upheld the conviction noting that the defendant was charged with violating MCL 257.625(4) which includes both subsections (1) of 257.625 (OUIL) and subsection (3) (Impaired). It stated: "We note that there is only one penalty for violation of 625(4), regardless of whether the accused violated subsections (1) or (3)." *People v Parks*, CA No. 230327, July 5, 2002.

Impaired driving is a necessarily included lesser offense to OUIL. In a trial for OUIL 3rd, the prosecution requested the impaired jury instruction which was given without objection. Defendant was convicted of impaired driving. On appeal he argued that the instruction should not have been given. The court of appeals noted that the trial court was required to grant the prosecutor's request since the impaired offense is a necessarily included offense. *People v Penzien*, CA No. 230836, July 2, 2002.

The trial court erred both in failing to require defendant, convicted of OUIL third offense, to perform 60 to 180 days of community service and in equating time defendant spent in residential treatment with jail time for purposes of awarding sentence credit. The trial court was statutorily mandated to impose a sentence including the period of community service, and the 21 days defendant spent in voluntary residential substance abuse treatment did not satisfy the mandatory minimum jail time requirement of the felony OUIL statute. Even if defendant's time in treatment was the equivalent of jail time, it was not "served" because of an inability to post bond and, thus, fell outside the scope of the sentence credit

statute. Defendant's sentence was vacated and the case remanded for resentencing. *People v Comstock*, CA No. 233410, July 2, 2002.

The trial court erred by finding the hearing referee's decision was not supported by competent, material, and substantial evidence on the whole record and in reversing the hearing referee's decision denying reinstatement of petitioner's driver's license. The evidence established petitioner received three alcohol-related convictions within 10 years. The substance abuse evaluation on which petitioner relied stated no basis for its conclusion he was no longer dependent on alcohol. The evaluation noted petitioner stated he did not have an AA sponsor. Petitioner gave contradictory information to the hearing referee. Although no evidence contradicted petitioner's assertion he had not consumed alcohol since 1996, his inability to articulate an understanding of AA principles supported a conclusion he did not demonstrate a long-term commitment to a support program and he did not show his alcohol problem likely would stay under control. The case was reversed. *Maysonet v SOS*, CA No. 229507, June 28, 2002.

Defendant's reckless driving convictions did not violate his right to due process because notice of the lesser included offense was adequate in this case. Defendant was charged with felonious assault for allegedly erratically driving a truck through a crowd of people in a parking lot, striking three. Under the circumstances, where defendant was alleged to have in effect used the vehicle as a weapon, the greater offense of felonious assault and the lesser offense of reckless driving were related. The charge of assaulting persons with a vehicle under these facts encompassed willful or wanton disregard for the safety of others. In light of the evi-

dence, the offenses of felonious assault and reckless driving were of the same or overlapping nature, and defendant's argument notice was inadequate because they shared no common element and were unrelated was without merit. The case was affirmed. *People v Lavack*, CA No. 231226, May 21, 2002.

The trial court properly admitted limited evidence regarding the police officer's prior contacts with defendant to demonstrate a basis for her recognition of him as the driver of the motorcycle she had stopped for speeding, who then sped away and eluded capture. Defendant claimed the evidence was prejudicial under MRE 403. The trial court did not allow testimony regarding the nature of the officer's contacts, and she testified only that she had prior contacts with defendant allowing her to identify him when she stopped him. In light of the fact that the driver of the motorcycle was not apprehended, the identity of the driver was an important issue. The case was affirmed. *People v Papenhagen*, CA No. 225654, December 21, 2001

Defendant was properly convicted of aiding and abetting OUIL Causing Injury. Circumstantial evidence showed that defendant furnished beer to the driver, Goss, and then suggested that they travel to a party. Prompting Goss to decide to drive, although it was apparent that she was intoxicated, was sufficient to support defendant's conviction of aiding and abetting OUIL causing injury. The focus was not exclusively on defendant's mental state when he supplied the liquor to Goss, but, also at the time Goss decided to drive when intoxicated. *People v Falicki*, CA No. 225787, December 28, 2001.

