



The Yellow Light Legal Update

Statute And Case Law Alert !!!

Special Cases of Interest

- Informational Checkpoints are constitutional. *Illinois v Lidster.*
- The implied consent laws do not apply when the blood is drawn for medical purposes. *People v Green.*
- There was no constitutional violation when the officer ran the license plate on defendant's car even though there was no traffic violation. *People Jones.*

U.S. Supreme Court

Supreme Court Upholds Informational Checkpoints.

A 70-year-old bicyclist was killed by a hit and run driver. One week after the crime, the police set up a check point at the crime scene at the same time that the victim was killed. They detained each car for 10 to 15 seconds, asked the occupants if they had any information regarding the hit and run, and handed out a flyer requesting their assistance in investigating the crime.

The defendant swerved his car upon approaching the checkpoint, nearly hitting an officer. He was subsequently

arrested and convicted for drunk driving. He appealed to the U.S. Supreme Court, claiming that his detention at the checkpoint was an illegal seizure.

The Supreme Court noted that there is a significant difference between investigative checkpoints where the police are checking each motorist for possible criminal violations and the informational checkpoint conducted in this case. Investigative checkpoints are presumptively unconstitutional.

Informational checkpoints are evaluated to determine whether they are constitutionally

(Continued on page 2)

New Statutes

2003 PA 314-315. Effective January 9, 2004, MCL 257.601b was amended. The previous version required that the moving violation that caused injury or death of a construction zone worker be a violation with criminal penalties. Public Act 314 changed that. Now, the law states that someone "who commits a moving violation for which not fewer than 3 points are assigned under section 320a" and causes injury or death has violated this section. Also in that public act, the word **construction** was changed **to work**, to make the statute read "in a work zone". However, there is one

(Continued on page 4)

Case Law Alert !!!

(Continued from page 1)

reasonable. The test to determine reasonableness is:

1. The gravity of the public concern served by the checkpoint.
2. The degree to which the checkpoint advances the public interest.
3. The severity of the interference with individual liberty.

In evaluating this checkpoint, the Court held that the public concern was grave because the crime involved a human death; that the checkpoint advanced the public interest by questioning people on the same road at the same time as the accident, presumably people who use that road routinely and therefore were likely to have seen something; and that the brief 10-15 second questioning was only a minimal interference with a driver's liberty. *Illinois v Lidster*, No. 02-1060, January 13, 2004.

Editor's Note: Be sure to check with your local prosecutor before enacting this type of informational checkpoint. At this time, investigative checkpoints are unconstitutional under the Michigan Constitution. *Sitz vs MSP*, 443 Mich 744 (1993).

Michigan Published Cases

Defendant was arrested after he drove his car in an erratic fashion across the grass of a Ford Motor Company plant. Defendant claimed he was under arrest as soon as the officers approached him and tried to handcuff him. However, the officers' initial contact with defendant was for the purpose of attempting to investigate the complaint made by Ford security and the contact was proper. Defendant appeared intoxicated and led the officers to believe he planned to fight them. He was aggressive and hostile, and the officers were unaware of whether he possessed a weapon.

One issue raised involved the Implied Consent Law. Defendant was arrested for, among other things, OWI. However, the officers did not advise the defendant of his chemical test rights. He was taken to the hospital for treatment. While at the hospital, blood was taken for medical purposes. The results from the blood test were admitted for the OWI charge. The court stated that since the blood was drawn at the hospital for medical purposes, the implied consent laws did not apply and therefore defendant was not entitled to an independent chemical test. While he should

have been read his rights because of the OWI arrest, there was no prejudice by the officers in not advising the defendant of them.

The case was affirmed. *People v Green*, case no.: 241615, released on January 22, 2004.

There was no constitutional violation when a police officer, in the absence of observing a traffic violation, ran a computer check on the license plate number of defendant's car, stopped the car after learning there were two outstanding warrants on its registered owner, and after establishing defendant was the registered owner, arrested him and searched defendant and his car. The trial court granted defendant's motion to dismiss on the basis the officer violated his Fourth Amendment rights when he ran the computer check and made an investigatory stop on the basis of the information learned from the check. The court of appeals reversed, holding a police officer may run a computer check on a license plate number in plain view even if the vehicle has not been seen violating a traffic law and there is no information suggesting a crime has been committed. A person does not have a reasonable expectation of privacy in a license plate openly displayed in plain view. A police officer may also reasonably suspect a vehicle is being driven by its registered owner and when information

(Continued on page 3)

Case Law Alert !!!

(Continued from page 2)

learned from a computer check provides a basis for further investigation or the owner's arrest, make an investigatory stop to find out if the driver is the owner. Reversed and remanded for reinstatement of the charges. *People v Jones*, case no.: 242781, released January 27, 2004.

Unpublished Cases

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



Since there was a substantial amount of eyewitness testimony presented concerning defendant's theory the driver of a slow-moving farm tractor and trailer was actually the cause of the fatal accident rather than defendant, the evidence of the civil settlement with the tractor driver's insurer, while marginally relevant, was properly excluded under MRE 403. Defendant argued the evidence surrounding the civil settlement was relevant because the personal representative of the estate of one of the decedents pursued a claim the tractor driver was the cause of the accident, and the claim settled for \$75,000 out of a \$100,000 policy limit. However, a significant amount of testimony from several eyewitnesses implicating the tractor driver as a cause of the accident was introduced at trial, rendering the settlement evidence cumulative. Affirmed and remanded for resentencing. *People v*

Fielstra, case no.: 239706, released September 23, 2003.

Since defendant failed to establish the evidence at issue was exculpatory and there was no "official animus" or "conscious effort to suppress" by the police resulting in the erasure of a 30-second videotape taken at the time he was stopped, the trial court did not err in denying his motion to dismiss. The tape would have shown how the motorcycle was parked, defendant was not on the motorcycle at the time, and whether he had balance and coordination problems. Defendant was operating his motorcycle at speeds up to 105 mph for about nine miles while being followed by a DNR truck with its siren activated. He smelled of intoxicants when apprehended, and breathalyzer tests resulted in readings of .08, .10, and .09. The tape may have helped establish defendant did not have balance and coordination problems. However, he had just maneuvered a motorcycle at excessive speed for over nine miles, and there was no testimony he was unsteady. Thus, the videotape would not have been materially or potentially exculpatory. The case was affirmed. *People v Sandvik*, case no.: 242000, released November 18, 2003.



The trial court properly granted defendant's motion to quash the felony information charging him with (1) operating a motor vehicle while his operator's license was suspended or revoked and causing death and (2) negligent homicide because the prosecution did not present *any* evidence establishing the fetus (whose mother was ejected from the car window when defendant's vehicle slid into a train) had *any* brain activity or respiration once removed from the mother, thus there were no facts to conclude the child was born alive as defined in *Selwa*. After the accident the mother was transported to a hospital where it was noted the fetus had a low heart rate and the placenta had separated. The child was delivered and placed on life support. Several days later the child was pronounced dead and taken off life support. The cause of death was lack of oxygen to the brain as a result of the placenta separation. No evidence was presented to demonstrate that "following the expulsion or extraction from the mother, there is lacking an irreversible cessation of respiratory and circulatory functions or brain functions." The medical testimony in the district court was conclusory and was unsupported by competent evidence. The district court's decision to bind defendant over for trial was an abuse of discretion.

(Continued on page 4)

Case Law Alert !!!

(Continued from page 3)

The case was affirmed. *People v French*, case no.: 242564, released December 4, 2003.

The trial court did not err in denying defendant's motion to suppress and in admitting the results of his Data Master tests, rejecting defendant's argument the results should have been suppressed because the trooper's comment he had "two good tests" nullified his request for a third sample (which defendant declined to give). Defendant's first result was 0.13 percent and his second result was 0.11 percent. The variance between the samples was beyond that permitted by the rule, and a third test was not administered. The court concluded the analysis in *Tomko* applied equally to the current version of Rule 325.2655 (1)(f), and the trooper fulfilled the requirement of the rule when he requested a third sample. The word "may" in the rule indicates discretionary activity and nothing in the language of the statute or the rule creates a duty on the part of the police to urge a subject to take a third test. Further, since defendant declined to take the third test before the trooper said he had "two good tests," the trooper's comment did not "nullify" the request for a third test. The case was affirmed. *People v Warfield*, case no.: 242172, released December 11, 2003.

The trial court did not abuse its discretion when it denied defendant's motion to quash the information and for a directed verdict. Defendant argued she was not an "operator" of the motor vehicle as the term is defined in MCL 257.36, which requires the "operator" be "in actual physical control of a motor vehicle upon a highway," because the state police post parking lot did not constitute a highway. But this overlooked the fact MCL 257.311 does not require an "operator" to display his license to the police upon request. Rather, the statute requires a person "operating" a motor vehicle must have his operator's license in his possession and display it to a police officer upon demand. Therefore, the relevant definition is "operating" not "operator." Although the vehicle was turned off at the time the trooper approached it, defendant was behind the wheel, defendant admitted it was her car, and she had parked it in the driveway. The trier of fact could reasonably conclude defendant was, in fact, "operating" a motor vehicle (in actual physical control), thus obligating her to produce her license upon the trooper's demand. The case was affirmed. *People v Motton*, case no.: 242714, released December 11, 2003.



(Continued from page 1)

minor glitch. Public Act 315 which provides the definition of "work zone" used in Public Act 314, does not go into effect until April 8, 2004.

What that means is until April 8, if someone is charged under MCL 257.601b, "work zone" does not have a statutory definition. On April 8, it will.

Public Act 182 of 2003.

Effective January 1, 2004. This law amended MCL 750.394, throwing a "stone or missile" at a car or train.

The law, which previously was only a misdemeanor, was changed to include graduated penalties.

If a person throws, propels, or drops, a stone, brick or other dangerous object (missile is no longer listed in the statute) at a car, etc, the person is facing a 93-day misdemeanor; if the violation causes injury, then they are facing a four-year felony; if the resulting injury is one of serious impairment, it is a ten-year felony; and if the violation causes the death of a person, it is a fifteen-year felony.

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.



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