



# The Yellow Light Legal Update

## Statute And Case Law Alert !!!

### New Statutes

**2003 PA 165 (ESB 509).** Requires individuals who collect 7 or more points on their driving record after October 1, 2003 to pay a driver responsibility fee of \$100, plus \$50 for every point in excess of 7. Individuals convicted of drunk or impaired driving, manslaughter, murder, DWLS, and selected other offenses will pay greater assessments. Failure to pay the assessment will result in license suspension. Effective October 1, 2003. (See Article in The Green Light News.)

**2003 PA 185 (EHB 4715).** Allows a judge or district court magistrate to issue search warrants by fax or over a computer network. Effective October 17, 2003.

### Published Case Law

**D**efendant was charged with both failure to stop at the scene of an accident and negligent homicide. Defendant claimed that had he stopped and given the required information, he would have incriminated himself for negligent homicide by admitting he was at the scene and involved in the events leading up to the accident. The court held the disclosures mandated under MCL 257.617 and MCL 257.619 do not create a substantial risk of self-incrimination, and charging defendant with both failure to stop at the scene of an accident and negligent homicide did not violate his constitutional right against self-

incrimination. The court further held any inferences that could be drawn from the act of stopping were “not testimonial in the Fifth Amendment sense” and disclosure of a person’s name and address is a neutral act, which “identifies but does not implicate anyone in criminal conduct.” The conviction was affirmed. *People v Goodin*, Case no. 239280, released July 8, 2003.

**A**t a formal hearing on a speeding ticket, the district court correctly concluded because the officer who stopped defendant for speeding had followed the recommendations of the Michigan Speed Measurement Task Force (MSMTF) regarding the radar

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### Special Cases of Interest

- A police laboratory report is hearsay and not admissible under the public records exception. *People v McDaniel*.
- Defendant statements to the police that he drove his vehicle were factual statements, thus the corpus delicti rule was not violated. *People v Morris*.
- The first breath sample was sufficient to satisfy the statutory requirements for admissibility of breath tests. *People v Miller*.



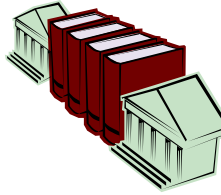
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speedmeter, the applicable *Ferency* requirement was met. *Ferency* imposes requirements on the admission of radar speedmeter readings into evidence. One is that “the speedmeter be serviced by the manufacturer or other professional as recommended.” At the hearing, defendant elicited testimony from the officer, who had been certified as an expert, indicating the radar speedmeter had not been serviced for about 13 months and he was not aware of any manufacturer servicing guidelines. Unlike the other requirements imposed by *Ferency*, the requirement at issue does not mandate any specific actions. The MSMTF is an agency with demonstrable expertise. The officer testified on the basis of his training and instruction, the MSMTF did not require any servicing requirements for the speedmeter unit. The court of appeals held the officer complied with the relevant servicing requirements under *Ferency*—no servicing was recommended and no servicing was performed. The case was reversed and the finding of being responsible upheld. (Note: The Circuit Court had reversed the finding of being responsible.) *People v Stramcutter*, case no.: 241098, released on October 21, 2003.



The Michigan Supreme Court held a police laboratory report was hearsay and not admissible under the public records exception (MRE 803(8)) because it helped establish an element of the crime by use of hearsay observations made by police officers investigating the crime. At trial, the chemist who performed the analysis did not testify because he had retired. The prosecution presented another chemist who worked for the police department, but he had no personal knowledge of the testing. The court held the report prepared by a police officer, was adversarial, destined to establish the identity of the seized substance, and the Court of Appeals erred in applying *Stacy*. The error could not be harmless because this was the only evidence that established an element of the crime for which defendant was charged. The court also ruled that the business records’ exception (MRE 803(6)) could not be used as the “source of information or the method or circumstances of preparation indicate lack of trustworthiness.” The judgment of the Court of Appeals was reversed, defendant’s conviction was vacated, and the case remanded. *People v McDaniel*, case no.: 122922, released November 4, 2003.



### Unpublished Cases

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

Assuming defendant established a reasonable probability an accident reconstruction expert would be of assistance to the defense and the trial court erred in denying the request for assistance, the denial of funds to the indigent defendant to obtain expert assistance was harmless beyond a reasonable doubt since it did not result in a fundamentally unfair trial. Defendant was able to proceed safely to trial without expert assistance. He presented a defense arguing he might not have been driving his vehicle at the time of the accident. No effort was made to cross-examine the police witnesses concerning the physical evidence defendant now argued might have supported a possible defense either his vehicle was defective or the van struck his truck rather than the other way around, or to challenge an eyewitness’s observations. Based on defendant’s failure to question the available witnesses concerning the physical evidence, the court could not say any error in denying expert assistance contributed to the guilty verdict. The conviction was affirmed. *People v Davidson*, case no.: 236302, released July 3, 2003.

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Defendant's convictions of both felonious assault and felonious driving did not violate double jeopardy protections. Noting the issue presented was whether the Legislature intended multiple punishments at a single trial for individuals committing two offenses in the same criminal transaction, the court examined both statutes. The purpose of the felonious assault statute is to punish persons placing another in fear by use of a dangerous weapon, while the felonious driving statute focuses on the culpable nature of a defendant's conduct and the resultant harm, and its primary purpose is to protect people from crippling injuries. Therefore, multiple punishments for these two crimes do not violate double jeopardy principles. Affirmed. *People v. Owen*, case no.: 239279, released July 29, 2003.

Based on *Lardie*, there was insufficient evidence to support defendant's convictions of OUIL causing death, OUIL causing miscarriage or stillbirth, and OUIL because there was no evidence he was intoxicated at the time of the incident or that his driving was a substantial cause of the fatalities. Here, no Breathalyzer or field sobriety tests were performed and no officer opined defendant was intoxicated. Although the officers



testified defendant had a strong odor of alcohol, his eyes were glossy, and his speech was slow, no witness testified he was unable to walk, keep himself balanced, or respond to the officers' questions. Instead, defendant's demeanor remained calm. Although the evidence established defendant failed to apply the brake before hitting the victim, there was no evidence he drove improperly. The only evidence of the amount defendant drank before the accident was his admission he had two shots of cognac. The court concluded the evidence was so underwhelming it could not affirm defendant's convictions and the court vacated his convictions and sentences. *People v. Shell*, case no.: 236993, released August 26, 2003.

Sufficient evidence supported defendant's convictions of OUIL causing death and operating a vehicle with license suspended causing death, and her convictions of both these offenses did not violate the prohibition against double jeopardy. No breathalyzer or field sobriety tests were ever administered to defendant. However, it could be reasonably inferred she was driving while intoxicated based on the evidence of her erratic driving at a very high speed (an estimated 80-90 mph) on a residential street

immediately prior to the accident, a witness's unequivocal testimony she smelled a noticeable beer odor on defendant when she arrived at the witness's house minutes after the accident, and a police officer's testimony when he arrested defendant two hours later, she had slurred speech and a very strong odor of intoxicants. A certified copy of defendant's driving record admitted at trial indicated her license was indefinitely suspended at the time of the accident.

Also the convictions for OUIL causing death and DWLS causing death did not violate the double jeopardy clause in the Michigan Constitution. The court found that each statute targeted distinct societal norms. Defendant's convictions and sentences were affirmed. *People v. Hannaford*, case no.: 240817, released September 16, 2003.

There was sufficient evidence to convict defendant of OUIL third offense without violating the corpus delicti rule because his statements to the police and witnesses did not alone establish his guilt. Defendant statements to the police that he drove his vehicle were factual statements, not confessions. The corpus delicti rule is limited to admissions that are confessions of guilt and not to



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mere admissions of fact. If the fact admitted does not itself show guilt, but needs proof of other facts not admitted by defendant, it is admissible as an admission of fact. Additionally, there was evidence independent of the statements establishing an injury had occurred and some criminal element was involved. The prosecution presented evidence of the collision, the smell of alcohol emitted from defendant's breath, he failed field sobriety tests, and he was the owner of the vehicle that collided with the parked vehicle. The conviction was affirmed. *People v. Morris*, case no.: 240028, released September 16, 2003.

Since the first breath sample was sufficient to satisfy the statutory requirements for evidentiary purposes, the failure to obtain the second breath sample was not error requiring reversal. There was sufficient evidence, independent of the evidentiary breath test (EBT), to affirm defendant's conviction of OUIL, third offense and endangering an occupant younger than 16 years old, third offense. The breathalyzer operator gave defendant an EBT and obtained a sample. His attempt to obtain a second sample was unsuccessful

because defendant did not maintain a proper seal around the EBT tube. Absent a showing a technical violation resulted in inaccurate test results, a violation of the administrative rule may be harmless error. Here, there was no showing the result from the first test was inaccurate, and the inability of the breathalyzer machine to obtain another test result may not undermine the machine's accuracy. Defendant did not present any evidence or explanation suggesting the machine provided inaccurate results from the first test. The prosecutor presented sufficient evidence—even without the breathalyzer test—of defendant's intoxication. The conviction was affirmed. *People v. Miller*, case no.: 240386, released October 16, 2003.

The trial court properly denied defendant's motion for a directed verdict regarding the charge of operating under the influence causing death. Defendant claimed submitting the charge to the jury caused it to compromise by convicting him of the lesser charge of negligent homicide. Defendant's ex-wife testified defendant smoked marijuana on

two occasions the day of the crash and she believed he became intoxicated from the marijuana. An eyewitness testified he observed defendant's vehicle drift slowly and smoothly across the centerline before hitting the tree. The sergeant testified a test of defendant's urine revealed the presence of marijuana.

The deputy sheriff testified, based on his analysis of the accident scene, he did not believe the vehicle had had a mechanical problem and defendant told him he had a "blank spot" before the crash. Therefore, the jury could reasonably have concluded defendant hit the tree with his vehicle because he was under the influence of marijuana, and the trial court did not err by submitting the charge to the jury. The conviction was affirmed. *People v. Klein*, case no.: 241219, released on October 16, 2003.



### ***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.