



# The Yellow Light Legal Update

## Case Law Alert !!!

### Out of State Opinions

The district court properly denied the defendants' motions to suppress evidence recovered from their vehicle because 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 defendant's 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 case was Affirmed. *United States v. Copeland*, Court of Appeals, Sixth Circuit, Nos. 01-1005/1016, Decided September 10, 2002.



### Unpublished Opinions

*(An unpublished opinion is not binding as precedent but may have persuasive value in court.)*

There was sufficient evidence of gross negligence to support defendant's felonious driving conviction. Defendant admitted when he saw the victim's car while attempting to pass, he realized it might turn left in front of him and if it did, "this could be a problem". This satisfied the first element of gross negligence. Defendant did not deny he had, at that moment, the ability to brake and avoid or lessen any injury a collision might cause, which satisfied the second element of gross negligence. Defendant did not elect to brake. Rather, he stated he chose to accelerate. The failure to brake, alone, would have satisfied the third element of gross negligence since a reasonable person would have realized a collision between a passenger vehicle turning left across a two-lane road and a tractor-trailer traveling at 50 mph would likely prove disastrous to the car and its passengers. Defen-

dant's conviction was affirmed. *People v Bruce*, CA No. 231693, Decided September 17, 2002.

The trial court properly admitted evidence related to any portion of the vehicle defendant was alleged to have been driving at the time of the crash that was not preserved by police. Defendant presented no evidence the police or the prosecution intentionally destroyed or suppressed the evidence. The vehicle was not destroyed by the police or the prosecution, but rather by a private party who was never specifically requested to do so. The case is affirmed. *People vs. Fabndrich*, CA No. 232169, Decided September 17, 2002.

There was sufficient evidence to support defendant's conviction of OUIL causing a serious impairment of a body function. He argued the uncorroborated lay testimony was not sufficient to establish complainant's loss of voice and/or energy constituted a serious impairment of a body function. The court held no case

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In this 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.

*The court decisions in these articles 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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law requires expert medical testimony must be presented in every such instance regarding a charge of OUIL causing a serious impairment of a body function. The undisputed evidence established that because of the collision between defendant's vehicle and complainant's vehicle, complainant struck his larynx on the dashboard, and lost the ability to speak in a strong voice. The court concluded this was a serious impairment of body function. The case was affirmed. *People v. Smith*, CA No. 233469, Decided August 16, 2002.

The trial court erred in granting defendant's motion to quash the information because violations of MCL 257.625(1) fall under the purview of MCL 764.15(1)(d) and that subsection no longer requires a police officer to observe a defendant operating his vehicle in order to make a warrantless arrest for OUIL. The court concluded an arrest for OUIL is encompassed within the plain language of MCL 764.15(1)(d) since OUIL is a misdemeanor that can result in imprisonment for up to 93 days, one day more than the 92-day requirement of the statute. The court further held the police had the necessary reasonable suspicion based on information from an identified citizen-informant, who provided detailed, specific information regarding the make and model of defendant's car, the roads she traveled, and about her erratic driving. The case was reversed and remanded. *People v McClatchey*, CA No. 237570. Released August 30, 2002.

The trial court improperly reinstated petitioner's driver's license, reversing the administrative decision revoking petitioner's driver's license for consuming al-

cohol in violation of the restrictions imposed on his license. The trial court clearly erred in (1) considering evidence outside the administrative record, (2) modifying the condition of the restricted license upon reinstatement, and (3) concluding respondent's decision to revoke petitioner's license was arbitrary, capricious, and an abuse of discretion. There was substantial evidence in the record supporting respondent's determination the petitioner was drinking alcohol in violation of his restricted license. Therefore, respondent's determination was neither arbitrary, capricious, nor an abuse of discretion, and the trial court improperly substituted its judgment for that of respondent. The case is reversed. *Blehm vs Secretary of State*, CA No. 228251. Released August 23, 2002.

The trial court's special jury instructions on the elements of involuntary manslaughter constituted error requiring reversal of defendant's conviction. The trial court allowed the jury to find defendant guilty of involuntary manslaughter without proof of gross negligence, i.e. merely by proof defendant drove while under the influence or when visibly impaired, which misstated the law. By melding together a partial instruction on the statutory offense of OUIL causing death, an uncharged offense, with the instructions for common-law involuntary manslaughter, the instructions essentially eliminated the prosecution's burden of proving the required element of gross negligence. The case was reversed and remanded. *People v Adams*, CA No. 230376 August 20, 2002.

The trial court erred in finding a violation of MCL 764.2a required suppression of a defendant's

breathalyzer test results and dismissal of the OUIL and possession of open intoxicants in a motor vehicle charges against him. The trial court granted defendant's motion to suppress on the basis the Farmington Hills police officers, who stopped defendant's car, and subsequently arrested him were not in actual pursuit of defendant until they entered West Bloomfield, and the failure to contact the West Bloomfield police made defendant's stop and arrest unlawful. However, in *People v Hamilton*, which had nearly identical facts, the Supreme Court held an illegal statutory arrest does not necessarily render an arrest unconstitutional, and the exclusionary rule only applies to constitutionally invalid arrests, not merely statutorily illegal arrests. The case was reversed and remanded. *People v Levin*, CA No. 234653, Decided on August 9, 2002.



### Case Law Reminder

The blood alcohol test results are statutorily deemed to relate back to the time of the driving, thus there is no need for prosecutors to extrapolate the results back to the time of the driving. Normal evidentiary rules govern, and the only prerequisite to the admissibility of chemical tests is a threshold relevancy requirement as codified under MRE 401, 402, and 403. Suppression of test results is required only when there is a deviation from the administrative rules that call into question the accuracy of the test. *People v Campbell*, 236 Mich App (1999)