

The YELLOW LIGHT LEGAL UPDATE

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Case Law Update

FEDERAL CASES

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The occupants of the car were unlawfully seized following the conclusion of the traffic stop.

The court concluded a seizure occurred when, after the traffic stop was finished, the police officer asked the vehicle's driver to remain behind the vehicle, the court held the officer did not have the necessary reasonable suspicion to seize the driver and his passengers. After the officer gave the driver a citation and shook his hand, the driver turned around to return to the vehicle. The officer then said, "Okay, just hang out right here for me, okay?" and

proceeded to ask more questions. While the government made much of the fact the officer did not display an intimidating demeanor or use coercive language, the court concluded his words alone were enough to make a reasonable person in the driver's shoes feel he would not be free to walk away. The freedom of movement of the vehicle's passengers, including defendant, was subject to the officer's will as long as he detained the driver. Further, the nervousness of the driver and the passengers, their allegedly conflicting explanations of their travel plans, and one passenger's movement to the driver's seat did not provide reasonable suspicion to seize the

driver and passengers. Nervousness, by itself, is an unreliable indication, particularly in the context of a traffic stop, the allegedly conflicting explanations were not mutually exclusive, and the officer admitted he was not concerned about the passenger moving to the driver's seat. The district court's grant of defendant's motion to suppress

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CASES OF SPECIAL INTEREST

The trial court properly excluded evidence of marijuana in the crash victim's blood. There was no evidence that the victim was driving in a negligent manner. *People v Kuch.*

The Circuit Court improperly substituted its judgment for the DLAD hearing officer's judgment. The petitioner had been diagnosed with alcohol dependence and

expressed confusion whether or not he was an alcoholic. *Markose v Secretary of State.*

The District Court properly denied a bind over on Vehicular Manslaughter and OUIL Causing Death where the defendant could not have avoided the crash if he had been sober and driving below the speed limit. The intoxicated driving was not a substantial cause of the crash. *People v Large.*

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was affirmed. *United States v Richardson*, 6th Circuit, Case no. 02-6146, released September 24, 2004.

MICHIGAN

Unpublished Cases

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

Any error in instructing the jury on aiding and abetting regarding the OUIL offense was harmless when it was clear the jury, in also convicting defendant of operating in violation of license restrictions, concluded he was the one operating the vehicle. Defendant contended there was insufficient evidence to establish his liability under an aiding and abetting theory because there was insufficient evidence the other individual, who he contended was driving the vehicle at the time of the accident, was in fact intoxicated. However, in also convicting defendant of the operating in violation of license restrictions offense, the jury must have rejected his claim it was the unidentified other individual, rather than defendant, who was operating defendant's vehicle. Therefore, the court was not persuaded any error in the aiding and abetting



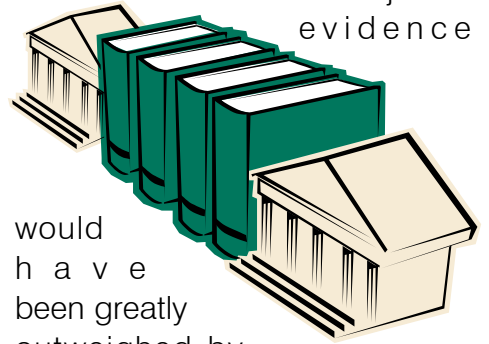
instruction was outcome determinative. Defendant's convictions were affirmed. *People v Greene*, COA no. 250699, released September 21, 2004.

Distinguishing the facts of *People v Moore* (246 Mich App 172 (2001)), the court held the trial court did not abuse its discretion when it granted the prosecutor's pre-trial motion to bar defendant from introducing evidence the accident victim had marijuana in his bloodstream at the time of the accident, and marijuana cigarettes were found in his car. The case arose when defendant suddenly turned left at an intersection after leaving a bar and his car struck a car being driven in the opposite direction by the victim. Witnesses testified there was no way for the victim to avoid the accident because defendant turned so suddenly. The victim died as the result of his injuries. Several witnesses at the scene, including State Police officers, testified they smelled alcohol on defendant. He admitted when asked how much he had to drink, "too much." Here, there was no evidence the victim was driving in a negligent manner. The eyewitnesses to the accident testified there was nothing the victim could have done to avoid the crash because

defendant had turned suddenly in front of his car. The probative value of the marijuana evidence

would have been greatly outweighed by its prejudicial effect. Defendant's convictions of OUIL causing death, OUIL causing serious injury, and negligent homicide were affirmed. *People v Kuch*, COA no. 250812, released September 16, 2004.

There was sufficient evidence to support defendant's fourth-degree fleeing and eluding a police officer conviction. Defendant claimed the prosecutor failed to establish the officers were engaged in the lawful performance of their duties at the time of the alleged infraction. The court held there were objectively manifested indications defendant may have been involved in the armed robbery. Defendant claimed the prosecutor presented insufficient evidence to establish he tried to flee or elude the police because he did not increase his speed, which was below the speed limit, and because he responded to the officers' signal to stop his vehicle within 1½ miles. Defendant's actions in speeding back up to 45 mph, continuing to



drive down the freeway, and running a red light after exiting the freeway, while being directed to pull over and stop by flashing lights, sirens, and verbal commands, established an attempt to avoid capture. The case was affirmed. *People v Cynar*, COA no. 249270, released September 16, 2004.

The circuit court improperly substituted its judgment for the DLAD hearing officer's judgment and misapprehended and misapplied the substantial evidence test in reversing the hearing officer's decision denying the petition for reinstatement of the petitioner's driver's license. Petitioner's driver's license was administratively revoked after two alcohol-related driving offenses within seven years. He submitted independent sources corroborating his abstinence for a period of maybe as long as 18 months, including test results, letters, and a report from his probation officer. However, his substance abuse evaluation indicated he was alcohol dependent and was in early partial remission, and



recommended he attend more AA meetings to gain further insight into his problem. In light of the diagnosis of alcohol dependence, the fact petitioner had relapsed after a lengthy period of sobriety, he expressed confusion at the administrative hearing regarding whether he was an alcoholic, and his inability to state with certainty how long he maintained sobriety between his arrests, the hearing officer determined petitioner needed to show a longer period of sustained abstinence. The court concluded the hearing officer's decision was not arbitrary or capricious. The case was reversed. *Markose v Secretary of State*, COA no. 247267, released September 14, 2004.

The trial court properly found the district court abused its discretion in binding defendant over on the manslaughter with a motor vehicle count. Defendant's vehicle struck and killed the victim as she rode her bicycle into the roadway from her elevated and partially obscured driveway. The prosecutor presented evidence defendant was traveling between 60 and 65 mph in a 55 mph zone and his blood alcohol content was .10. During the preliminary examination, an accident

reconstruction expert testified the accident was inevitable even if defendant had been driving 45 mph. There was no evidence demonstrating defendant could have avoided the resulting harm by using ordinary care and diligence. Even if he had been sober and driving 45 mph, defendant could not have avoided the accident. Further, the district court did not abuse its discretion in denying the prosecution's request to bind over defendant on the OUIL causing death count. Although defendant was driving under the influence of alcohol, the testimony revealed defendant's intoxicated driving was not a substantial cause of the victim's death. Thus, the prosecution failed to present sufficient evidence to justify a finding the defendant's intoxicated driving was a substantial cause of the victim's death as required by Lardie. The case was affirmed. *People v Large*, COA no. 253261, released August 10, 2004.

The trial court erred by denying defendant's motion to suppress evidence. Defendant claimed the search and seizure was predicated upon an illegal detention because the trooper did not have a reasonable suspicion to detain him after the initial traffic stop was

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concluded or to ask him to step out of the vehicle. The trooper unlawfully exceeded the initial stop when he began an investigatory stop by asking defendant to step out of the vehicle because the trooper had “only a generalized hunch” that criminal activity was afoot. The trooper was acting on the basis defendant told the trooper he was staying at a Holiday Inn “in Cheboygan” when the Holiday Inn closest to Cheboygan was 20 miles north in Mackinaw City, and the trooper’s observation the defendant and his passengers had no luggage in the passenger compartment of the

vehicle. A review of the record revealed the trooper commenced an investigatory stop when he asked defendant to step out of his vehicle so the trooper could question him regarding whether he “had bags in his trunk or where they were at,” whether “he had been in trouble before,” and whether “he’d been arrested for anything to do with drugs.” These questions had no relevance to the traffic stop and were asked to determine whether defendant was involved in criminal activity. The case was reversed. *People v Williams*, COA no. 249853, released August 5, 2004.

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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Statutory Alert!!!

Public Act 331 of 2004 amended the Michigan Vehicle Code to increase the maximum penalty for reckless driving. Under the Code, a person who drives a vehicle upon a highway or a frozen public lake, stream, or pond or other place open to the general public, including an area designated for parking, in willful or wanton disregard for the safety of people or property is guilty of reckless driving, which is punishable by up to 90 days’ imprisonment, a maximum fine of \$100, or both. The bill raised the maximum fine to \$500 and the term of imprisonment to 93 days. It goes into effect November 1, 2004.

Public Act 336 of 2004 amended Public Act 214 of 1952 (MCL 254.322) to provide that a failure to pay the toll to cross the Mackinac Bridge would be a misdemeanor punishable by up to 30 days’ imprisonment, a maximum fine of \$500, or both. It went into effect September 23, 2004.

Public Act 149 of 2004 amends Public Act 222 of 1972, which provides for official State personal identification cards. The act revised the penalties for reproducing, altering, counterfeiting, forging, duplicating, or using an official State personal identification card. It also prescribed penalties for selling or possessing an altered, counterfeit, forged, or duplicated card; and it extended the penalties to violations involving a photograph, image, or electronic data contained on a card. The act took effect on September 1, 2004.