



The YELLOW LIGHT LEGAL UPDATE

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Published Cases

As a new feature of *The Yellow Light Legal Update*, the case names in blue text will be set up as hyperlinks on the PDF version that will go directly to the opinions.

United States Court of Appeals for the Sixth Circuit

Traffic stop not supported by reasonable suspicion.

The district court erred by denying the defendant's motion to suppress the evidence seized during the traffic stop. The defendant argued the traffic stop violated the Fourth Amendment and that all evidence seized as a result of the stop should be suppressed.

The United States Court of Appeals for the Sixth District held that even if the officer had probable cause to stop the defendant, the evidence seized as a result of the stop must be suppressed.

The court held when the officer informed the defendant he believed drugs were in the car, and he would call a canine unit to the scene; he extended the scope and duration necessary to issue a citation for a tag-light violation. The officer had not developed reasonable

suspicion of criminal activity by this point. Therefore, the rest of the stop violated the Fourth Amendment.

The district court's denial of defendant's motion to suppress was reversed and the case was remanded. [United States v. Blair](#), case no. 06-06036/6037, decided and filed May 2, 2008.

Court allows for dog sniff outside of home!

The trial court erred by suppressing the evidence against the defendant on the ground the canine sniff, which provided the probable cause for the issuance of the search warrant, was obtained in violation of the of the rights guaranteed by the Fourth Amendment.

The police received information from an informant regarding defendant's



alleged possession and sale of marijuana.

Prompted by this information, the police arranged to have a trained narcotics-detection dog brought to the defendant's residence so a canine sniff could be conducted. The dog gave a positive indication for narcotics at the front door of the residence. Based on the dog's reaction, as well as their prior information, the police obtained a search warrant to search the premises.

The court held that the canine was lawfully present at the front door of the defendant's residence when it detected the presence of contraband. Under Michigan law, the police can lawfully stand on a person's front porch and look through the windows into the person's home, so long as there is no evidence the person expected the porch to remain private, such as by erecting a fence or a gate.

Any contraband sniffed by the canine while on defendant's front porch, fell within the "canine sniff" rule.

The court reversed and remanded for an entry of an order denying the defendant's motion to suppress the search warrant. [People v. Jones](#), case no. 275438, released May 20, 2008.

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Editor's Note: The Jones Court cited *Illinois v. Caballes*, 543 U.S. 405 (2005). In *Caballes*, supra, the police stopped the defendant for speeding. An officer walked his dog around the car, and the dog alerted at the trunk. Based on the alert, the officers searched the trunk, found marijuana and arrested the defendant. The Court held that "the use of a well-trained narcotics-detection dog-one that does not expose non-contraband items that otherwise would remain hidden from public view, during a lawful traffic stop generally does not implicate legitimate privacy interests."



Unpublished Cases

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

The Michigan Court of Appeals held the jury view of the intersection and the testimony about the manner in which the defendant was driving immediately before the crash were sufficient to support the verdict convicting him of vehicular manslaughter.

A crash reconstructionist attributed the cause of the fatal collision to defendant's speed and failure to yield. While there was some testimony about the visibility of the traffic light and its timing, the jury

had the opportunity to consider this testimony and compare it to their own assessment of the intersection during a jury view.

The court also rejected the defendant's challenges to the scoring of Offense Variables (OV) 3, 5, and 17, and Prior Record Variable (PRV) 5. The defendant claimed the scoring of OV 3 at 25 points was incorrect because the victim suffered a life-ending injury rather than a life-threatening injury. The court stated that was a "distinction without a difference."

The case was affirmed. *People v. See*, case no. 273905, released April 8, 2008.

The Court of Appeals held that "giving a false name to avoid arrest constitutes obstructing the execution of lawful process." The court rejected the defendant's claim there was sufficient evidence to support his common law obstruction of justice conviction.

The defendant did not challenge the evidence showing he repeatedly gave a false name to the police during a routine traffic stop; and he conceded two outstanding arrest warrants had been issued for him at the time of the stop. He argued there was no evidence he intended to obstruct the investigation and since the jury was not given a specific unanimity instruction, his conviction was invalid.

The court concluded defendant's effort to subdivide into two segments the criminal process misperceived the nature of his actions and the character of the crime.

"By repeatedly giving false names to the police, the defendant obstructed the administration of justice by interfering with his arrest on the outstanding warrants."

The case was affirmed. *People v. Orr*, case no. 277064, released May 20, 2008.

The trial court did not abuse its discretion in denying the defendant's request for a jury instruction on the sudden-emergency doctrine.

Defendant's truck collided with a stationary state police patrol vehicle, resulting in injury to a state trooper who was providing emergency assistance to another driver after the driver's semi-truck jackknifed and blocked the highway. The patrol vehicle was parked on the shoulder of the highway with its emergency lights and spotlights activated when the collision took place. The highway was icy and it was snowing.

Defendant argued he was denied his constitutional right to present a defense when the trial court denied his request for a jury instruction on the sudden-emergency doctrine.

Although the highway might have been icy, there was no direct evidence his truck actually hit an



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icy patch and slid out of control due to the ice, resulting in the crash. Further, the court concluded defendant's requested instruction did not fit the sudden-emergency doctrine.



The "doctrine applies when a person is faced with an emergency and makes a choice to take a particular course of action, or reacts to the emergency in a particular manner, but adopts a course of action or method, which, upon, reflection, was not the wisest choice."

Negligence cannot be found under those circumstances. However, this was not the type of instruction defendant requested.

Defendant's conviction of failure to use due care when approaching a stationary emergency vehicle was affirmed. *People v. Savic*, case no. 277257, released May 20, 2008.

There was sufficient evidence to support the defendant's OUIL conviction.

The officer administered "chemical test rights," to which he initially

agreed. By 1:03 a.m., the officers were transporting him to the county jail, arriving approximately 20 minutes later. However, the defendant declined to take the test when they arrived at the jail. The officers then obtained a search warrant to conduct a blood draw, which was performed at the hospital at 2:45 a.m. A Michigan State Police forensic scientist tested the defendant's blood for ethanol alcohol, and the results indicated his BAC was 0.10 grams per hundred millimeters of blood.

The defendant asserted there was no evidence regarding his BAC at the time he was operating his vehicle, and his expert witness testified it was highly improbable his BAC at the time he operated his vehicle was the same as when he was tested. Defendant's expert testified no one could conclude to a "scientific certainty" defendant's blood-alcohol level exceeded .08 at the time he operated the vehicle.

The court held "to the extent that the passage of time reduces the probative value of the test, the diminution goes to weight, not admissibility, and is for the parties to argue before the finder of fact."

The case was affirmed. *People v. Gayheart*, case no. 276046, released May 15, 2008.

The Court of Appeals agree with the trial court that there was no reasonable suspicious criminal activity afoot at the time of the stop based solely on seeing the vehicle mentioned in a report and the child in the vehicle. Someone reported a domestic dispute at a

condominium complex and indicated it involved a red Jeep Wrangler and a five-year old child.

An officer saw a child in the back seat of a red Jeep Wrangler just outside the complex and stopped the vehicle. The defendant, driver, was charged with OUIL with an occupant less than 16 years of age. The court concluded the officer did not have a reasonable or particularized suspicion that the defendant had been, was, or was about to be engaged in criminal activity when he stopped the vehicle.

All the officer knew was someone called 911 and reported a domestic incident, and it might have involved a red Jeep Wrangler and/or a boy. While this information would be consistent with two people having an argument, and possibly even an argument about a child, without more, there was no reasonable suspicion of criminal activity.



The motion to suppress, and coextensively to dismiss, was properly granted.

The case was affirmed. *People v. Ricketts*, case no. 276876, released May 1, 2008.

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The Court of Appeals concluded the testimony showed the police officer did not conduct a traffic stop, and the officer did not seize defendant for Fourth Amendment purposes, and therefore, the trial court properly denied her motion to suppress evidence.

After making contact with the driver, the officer determined he was going to arrest the driver because the driver could not produce a driver's license. After some interaction with the defendant, the officer advised her she was under arrest for hindering his investigation. According to the officer, the defendant fled and threw her purse. He arrested the defendant and searched her purse, finding a loaded pistol and a plastic bag containing five rocks of crack cocaine.

The defendant argued the officer lacked reasonable suspicion to conduct a traffic stop.

The court held there was no evidence the officer exhibited some display of authority by activating his lights and siren, displaying his weapon, or issuing orders to defendant as he approached. The court further held "in exiting his car and approaching the defendant and her companion," the officer "did not seize the defendant."

Defendant's CCW, possession of less than 25 grams of cocaine, and felony-firearm convictions were affirmed. *People v. Lockhart*, case no. 276431, released May 8, 2008.

There was sufficient evidence to support defendant's conviction of OWI-Second Offense.

A neighbor called the police and an officer arrived about one hour later. The officer testified that on his arrival, he observed the truck was positioned between the neighbor's driveway and the roadway. Reportedly, defendant acknowledged to police he drove the vehicle backwards through the neighbor's yard and "out into the roadway and it stopped at that point," and conceded a portion of his vehicle was in the driveway.

Defendant contended the record did not support the finding he drove his truck in a place open to the general public or generally accessible to motor vehicles.

The court noted it was unnecessary to address this issue as evidence adduced at trial indicated defendant did not restrict his operation of the vehicle to the neighbor's driveway and front lawn.



The facts did not support his claim operation of his truck was confined to private property. Further, "private driveways and lawns fit within the category of areas generally accessible to motor vehicles within the meaning of the statute."

The case was affirmed. *People v. Campbell*, case no. 274823, released May 13, 2008.

The Court of Appeals held the evidence clearly established the defendant was driving carelessly in disregard of the safety of others.

Defendant testified at trial his friend caused the crash when she grabbed and pulled the steering wheel hard to the right. At issue was operating his vehicle in a "willful and wanton disregard of the rights or safety of others, or without due caution and circumspection and at great speed or manner that endangers or is likely to endanger any person or property resulting in" his friend's injuries.

The evidence was undisputed the defendant was intoxicated beyond the legal limit at the time of the crash. Defendant's intoxication was evident in his driving. One driver called 911 to report his dangerous driving before the crash even occurred.

Therefore, the evidence established the defendant was driving carelessly in disregard for the safety of others.

The case was affirmed.

People v. Romine, case no. 273618, released May 13, 2008.