



# The YELLOW LIGHT LEGAL UPDATE

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## Case Law Update

As a new feature of the Yellow Light Legal Update, on the pdf version, the case name, highlighted in blue, will be set up as a hyperlink directly to the opinion to make it easier to obtain.

### Federal District Court

While the petition was not time-barred, the court concluded petitioner's claims lacked merit, holding, *inter alia*, his ineffective assistance of counsel claim failed because he did not show a reasonable probability he could have prevailed at trial on his intoxication defense or he would have received a lesser sentence. Petitioner's convictions arose from his driving while intoxicated and engaging the police in a chase when they tried to stop him, which ended in the death of another motorist. He pleaded *nolo contendere* to second-degree murder, fleeing and eluding resulting in death, OUIL causing death, and being a fourth felony habitual offender. Petitioner alleged, *inter alia*, his plea was invalid because it was not knowing and voluntary, and he was denied the effective assistance of counsel at his plea and sentencing. He argued counsel was ineffective for failing to investigate or pursue an intoxication defense, counsel's failure to explain this defense to him or to assert it rendered his plea involuntary, and he should have been allowed to withdraw his plea. The factual basis provided by the prosecutor at the time of the plea, and petitioner's own description of the offense, established petitioner was driving at high rates of speed to elude police. One expert estimated



his speed reached between 81 and 91 mph. He also disregarded several red traffic lights. Petitioner's vehicle struck the victim's vehicle while traveling at an estimated 81 mph in a 25-mph zone. He had a BAC of .095 percent. The court held the "facts established at the plea hearing demonstrated the mental state for second-degree murder, particularly because petitioner's intoxication was included." Counsel was not ineffective for failing to press a voluntary intoxication defense since such a defense would have failed – second-degree murder and fleeing and eluding police are general intent crimes for which voluntary intoxication is not a defense. Petitioner's other claims also failed, and his petition was denied. [Earl v. Laffex](#), United States District Court, Eastern District of Michigan, case no. 04-10014, released September 30, 2007.

### Published Cases

**Signaling a lane change is required by the Michigan Vehicle Code.** The trial court erred by reversing the district court's denial of defendant's motion to suppress evidence because trial court erred in holding MCL 257.648 is unconstitutionally vague. The officer

watching defendant's vehicle saw defendant change lanes without using a turn signal, conducted a traffic stop, and discovered defendant was intoxicated. Defendant argued MCL 257.648 does not require a driver to use her traffic signal when changing lanes and the traffic stop was invalid. Defendant claimed MCL 257.648 fails to provide fair notice of the conduct proscribed, in that it is not clear whether a driver is required to use a turn signal when she changes lanes, and MCL 257.648 only applies to turns onto a different roadway. The phrase "turning from a direct line" is not defined in the text of the statute, nor are the individual terms comprising the phrase. Construing the terms according to their ordinary meaning, the court concluded the direct line in issue is established by the individual lanes making up a multi-lane roadway. Movement between those lanes constitutes a change in the direction or course in that the turn from one lane to another deviates from the defined route of the individual lanes. Thus, the ordinary meaning of the phrase "turning from a direct line" means to rotate one's vehicle so one leaves the line of automobiles in which one is traveling. MCL 257.648 states, "before stopping or turning from a direct line, [the driver] shall first see that the stopping or turning can be made in safety and shall give a signal as required[.]" Thus, the purpose of the statute is to provide notice of movements along the route that could impact other motorists. The court saw no reason to make a distinction between movement off the roadway and movement between lanes

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when the legislative aim is the same for both situations. A reasonable person of ordinary intelligence is not required to speculate about the phrase's meaning, and MCL 257.648 provides fair notice of what conduct is proscribed. The court held MCL 257.648 requires drivers to use a turn signal when changing lanes on a highway and is not unconstitutionally vague. The case was reversed and remanded. *People v. Hrllic*, case no. 278053, released November 29, 2007.

## Attorney General Opinions

In AG Opinion No. 7210, the Michigan Attorney General determined that Michigan law only allows driver's licenses to be issued to Michigan residents, and that aliens illegally in the United States cannot be residents of Michigan as contemplated by the Vehicle Code. As a result, illegal aliens are no longer eligible for Michigan driver's licenses. This reverses a previous Attorney General opinion on this issue.

**Editor's Note:** Currently law enforcement are being instructed to run a LEIN check on the license. If it comes back as valid, law enforcement should treat it as such. The opinion did not discuss Michigan licenses that were issued pursuant to the previous opinion. *AG Opinion Number 7210*, released December 27, 2007.

## Unpublished Cases

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

Concluding defendant failed to show a reasonable probability different conduct by his trial counsel regarding the alleged potential witnesses would have changed the result of the trial, the court held the trial court did not err in denying his motion for a new trial based on, *inter alia*, ineffective assistance of counsel. Defendant contended his trial counsel

provided ineffective assistance by failing to interview potential witnesses, not trying to contact the witnesses until the day of trial, and not calling one of the witnesses who appeared at trial. Defendant was convicted after a jury trial of operating a motor vehicle while intoxicated, third offense. He claimed the witnesses would have been able to testify he was seen in the



car earlier on the day of the incident and a third party was driving. However, the testimony of a police officer and another witness indicating they saw, in broad daylight, defendant driving the car with no passenger, and the evidence of his BAC level at the time, constituted overwhelming evidence of defendant's guilt. Further, the court found defendant's version of events, involving another supposed driver who fled the scene and jumped into a nearby river, "quite far-fetched." The testimony of the potential witnesses about what they saw earlier in the day would have done little or nothing to undermine the testimony of the officer and the other witness the defendant was driving the car at the time of the incident. The court also rejected his prosecutorial misconduct claim based on his argument the assistant prosecutor improperly prosecuted his case in violation of MRPC 1.9 because he was involved in defending defendant in an earlier criminal case. Since the earlier case involved unrelated charges, this case did not involve "the same or a substantially related matter" as the prior case. Defendant's conviction and sentence were affirmed. *People v. Nadeau*, case no. 270090, released December 20, 2007.

Although the defendant had standing to challenge his arrest, no Fourth Amendment violation occurred, and the court reversed the trial court's order suppressing the BAC results, reversed the order of dismissal, and remanded for further proceedings. At about 1:45 AM, a sheriff's deputy saw defendant's vehicle traveling 44 mph in a 25 mph zone. He followed defendant and saw him quickly pull into a residential driveway and park. The deputy parked his car in front of the house, turned on his overhead lights, and saw defendant take a few quick steps toward the house. The deputy ordered defendant to stop, he did so, and began to walk toward the deputy. The two met and spoke. The deputy smelled a "very strong" odor of alcohol on defendant's breath and noted his eyes were glassy. Placing a hand on defendant's upper arm, the deputy escorted him to a location near the patrol car on the street. The deputy arrested defendant after he failed two sobriety tests and a PBT. Defendant later submitted to a BAC test, which resulted in the charge of OUIL, third offense. He moved to suppress the BAC tests and argued his arrest violated the Fourth Amendment. The trial court agreed, granted the motion, and dismissed the case. The court of appeals held the deputy had probable cause to believe defendant committed a traffic violation where he observed and registered defendant's excessive speed in the residential neighborhood. Thus, the deputy could lawfully stop defendant to run a check on him and the vehicle, to issue a citation, and to ask reasonable questions concerning the violation. The court rejected defendant's argument the deputy had no right to walk up the driveway to talk to or detain him. A driveway is a public place and there is no reasonable expectation of privacy in an open driveway, particularly if someone else owns it. The deputy lawfully stopped defendant and smelled alcohol on his breath, which was enough to create a reasonable suspicion to justify sobriety tests. After the deputy performed the PBT, confirming defendant's intoxication, he lawfully

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arrested him. The case was reversed and remanded. *People v. Palm*, case no. 272901, released November 29, 2007.

Since the record showed defendant did not regurgitate or smoke, and because he was handcuffed and seat-belted in the back of the patrol car he could not have placed anything in his mouth, the court concluded any technical violation of the applicable administrative rule controlling BAC tests was harmless and there was no basis for invalidating the results of his BAC test. Defendant argued the trial court erred in denying his motion to suppress the results of his BAC test because the officer who administered it was driving his patrol car during part of the 15-minute observation period prior to administering the test required by the administrative rule. However, defendant admitted he had no recollection of placing anything in his mouth during the 15 minutes before the test, and the court concluded the trial court properly found there was no indication the test results were invalid. The court also rejected defendant's argument the trial court erred in denying his motion to quash all the charges against him on the basis the stop was illegal because the officers had no reasonable suspicion he had committed a crime and had insufficient time to see any traffic violation. Reviewing the record, the court found there was ample evidence to show not only the officers had sufficient time to observe defendant's violation of MCL 257.700(b), but also he had time to comply with the statutory requirement to dim his high-beam headlights in the presence of oncoming traffic. The record did not support defendant's claim the officers were traveling so fast he could not respond to their visual signal to dim his headlights. Since the officers personally observed a violation of MCL 257.700(b), they were justified in stopping defendant's vehicle. Defendant's convictions of third-degree fleeing and eluding, OWI, and reckless driving were affirmed. *People v. Omecinskyj*, case no. 271184, released November 27, 2007.

There was sufficient evidence to support the defendant's conviction of vehicular manslaughter. Defendant contended the prosecutor failed to prove he proximately caused the victim's death. However, a defendant's conduct need only be "a" substantial cause of another's death, not "the" proximate cause. His convictions arose from a traffic accident at an intersection. Defendant was driving on a street with a stop sign at the intersection. The other car had the right of way. Defendant's car failed to stop at the stop sign and collided with the other car as it proceeded through the intersection. There was no dispute the defendant failed to stop at the intersection. His car struck the victim's car with such force on the driver's side both doors would not open. The paramedics who arrived at the scene testified the victim was unconscious, had massive head trauma, massive oral trauma, his pupils would not dilate, and the amount of blood coming from his mouth prevented intubation. The victim died several days later from intense swelling of the brain due to a closed head injury. Thus, the evidence was sufficient to enable the jury to find beyond a reasonable doubt the defendant was a substantial cause of the victim's death. The case was affirmed. *People v. Foster*, case no. 27366, released November 20, 2007.

The district court properly bound the defendant over on charges of OUIL, third offense and operating a motor vehicle while license suspended, second offense. However, the trial court erred by granting defendant's motion to quash on the basis he denied driving the car. The district court properly found the prosecution presented sufficient circumstantial evidence the defendant was operating the car shortly before the police officer arrived at the scene. This evidence along with the undisputed evidence defendant's BAC was .16, supported a conclusion probable cause existed to believe defendant drove the car while intoxicated. The fact contradictory evidence—defendant denied driving the car and the car keys were not found on his person—existed

**New Statute:** On November 19, 2007, the Governor signed into law Senate Bill 79 which then became [Public Act 143 of 2007](#). The bill amended the Michigan Vehicle Code (MCL 257.223) to delete a requirement that a vehicle owner, upon receiving a registration certificate, sign the certificate with pen and ink in the space provided. A violation of this requirement was a civil infraction. The law went into effect on November 19, 2007.

did not warrant dismissal of the charges. The prosecution was not required to negate every reasonable theory consistent with innocence. Conflicts in the evidence are to be resolved by a jury, and the trial court should not substitute its judgment for that of the district court. The case was reversed and remanded for reinstatement of the charges. *People v. Newton*, case no. 273318, released November 6, 2007.

The court of appeals reversed the defendant's OUIL, second offense conviction, concluding it could not be reasonably disputed his trial counsel's performance involving "a strategy of nonparticipation, was deficient and objectively unreasonable" and defendant was prejudiced by it. Defendant's counsel allegedly urged the best defense strategy was for counsel not to participate in the trial while continuing to represent defendant and remaining in the courtroom. Counsel believed this tactic would increase the likelihood of success on appeal regarding the trial court's denial of a motion to adjourn the trial, and mounting an actual defense would be problematic for reasons related to the request to adjourn. Counsel did not participate in the trial except for the submission of some jury instructions. The trial court inquired during the trial, and defendant explained he understood what counsel was doing, although he could not specifically state he agreed with or consented to it – he essentially deferred to counsel's expertise. The

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trial proceeded and defendant was convicted. The court of appeals did not view the case as one where defendant was technically giving up his right to counsel, and there was no proper waiver of the right. Rather, the court viewed the case “as one arguably giving rise to a waiver of an appellate claim of ineffective assistance of counsel on the basis of defendant’s implicit



consent to defense counsel’s misguided trial tactics.” However, assuming a defendant can effectively waive his or her right to an ineffective assistance of counsel claim, the record did not support a finding the defendant understandingly waived the right. The record did not even indicate defendant expressly agreed with or consented to counsel’s trial strategy. The case was reversed and remanded for a new trial. *People v. Adams*, case no. 268761, released on October 30, 2007.

Even if the court assumed the defendant’s first OWI conviction was obtained in violation of her right to counsel, since her plea in the present OWI 3d case was accepted without her moving to set aside the prior conviction, under *Roseberry* she could no longer make a collateral attack on

her prior underlying OWI conviction. Defendant pleaded guilty to OWI 3d and was sentenced to 23 to 60 months’ imprisonment. The trial court denied her motion to withdraw her guilty plea, and the court affirmed. Defendant contended her first OWI conviction was obtained in violation of her right to counsel because her request for appointed counsel was denied and the conviction led to five days’ imprisonment. Thus, she asserted the prior conviction could not be used to support her OWI 3d conviction and the trial court erred in denying her motion to withdraw her plea. However, pursuant to *Roseberry* a collateral attack on a prior conviction underlying a present charge cannot be made after a defendant’s guilty plea to the present charge is accepted. Once the transcript regarding the prior conviction was filed in the trial court, the trial court accepted defendant’s guilty plea without further discussion with the parties. The trial court did not abuse its discretion in denying defendant’s motion to withdraw her guilty plea. The court also rejected defendant’s claim her trial counsel was ineffective for allowing her to plead guilty to OWI 3d without first challenging her underlying OWI conviction. The case was affirmed. *People v. Bach*, case no. 2689633, released October 30, 2007.

Since the disputed evidence was relevant to the issue of the person actually driving the truck when it was observed swerving on the road and to whether defendant was intoxicated, and assuming an objection to the disputed evidence would have been sustained by the trial court, defendant failed to establish the trial result was unreliable and the result would have been different but for counsel’s failure to object. Defendant’s conviction arose from a late-night incident in which a witness observed a truck being driven erratically. A public safety officer responding to the reported incident saw the truck do a U-turn, then park. The officer parked his patrol car, walked up to the truck, and saw defendant in the

### 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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driver’s seat, and his six-year old son sitting in the passenger seat. Because defendant smelled of alcohol, the officer performed field sobriety tests on him. Concluding defendant was drunk, the officer arrested him. A blood test later showed his BAC was .12. The prosecutor charged defendant with resisting arrest and OUIL with a juvenile passenger. Defendant contended his counsel was ineffective for failing to object to testimony provided by two officers describing defendant’s belligerent conduct after his arrest, including a remark about his son being placed in foster care. The prosecutor was required to prove defendant was operating a vehicle while intoxicated with a person under the age of 16 in the vehicle. The disputed evidence was relevant to the prosecutor’s burden of proving the elements of the crime. The case was affirmed. *People v. Joslin*, case no. 271168, released October 25, 2007.