PROSECUTING ATTORNEYS ASSOCIATION OF MICHIGAN

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Why You Want a Drug Recognition Expert Officer on Your Next Drugged Driving Case

By:Ken Stecker and Kinga Canike

The purpose of this article is to familiarize judges, prosecutors, and law enforcement officers with the role Drug Recognition Expert (DRE) officers play in drugged driving cases.

Michigan Compiled Law 257.625 reads in part as follows:

Sec. 625.
(1) A person, whether licensed or not, shall not operate a vehicle upon a highway or other place open to the general public or

generally accessible to motor vehicles, including an area designated for the parking of vehicles, within this state if the person is operating while intoxicated. As used in this section, "operating while intoxicated" means any of the following:

(a) The person is under the influence of alcoholic liquor, a controlled substance, or other intoxicating substance or a combination of alcoholic liquor, a controlled substance, or other intoxicating substance.

Thus, the prosecution must prove that the person was "operating while intoxicated," that is he/she was under the influence of alcoholic liquor, a controlled substance, or other intoxicating substance or a combination of alcoholic liquor, a controlled substance, or other intoxicating substance.

The test is whether, because of drinking alcohol, the defendant's mental or physical condition was significantly affected and the defendant was no longer able to operate a vehicle in a normal manner.

To be "under the influence" of alcoholic liquor for example within the meaning of Criminal Jury Instruction 2d 15.3 means as follows:
"That because of drinking alcohol, the defendant's ability to operate a motor vehicle in a normal manner was substantially lessened.

To be under the influence, a person does not have to be what is called 'dead drunk' that is, falling down or hardly able to stand up. On the other hand, just because a person has drunk alcohol or smells of alcohol does not prove, by itself, that the person is under the influence of alcohol. The test is whether, because of drinking alcohol, the defendant's mental or physical condition was significantly affected and the defendant was no longer able to operate a vehicle in a normal manner."

Recently, the Michigan Supreme Court in *People v. Koon*, 494 Mich 1; 832 NW2d 724 (2013), stated in a footnote as follows:
"Significantly, 'under the influence' is a term of art used in other provisions of the Michigan Vehicle Code. See, e.g., MCL 257.625(1)(a)(stating that a person is 'operating while intoxicated' if he or she is 'under the influence of . . . a controlled substance . . .'). See also People v Lambert, 395 Mich 296, 305; 235 NW2d 338 (1975) (concluding that an acceptable jury instruction for 'driving under the influence of intoxicating liquor' included requiring proof that the person's ability to drive was 'substantially and materially affected'); Black's Law Dictionary (9th ed), p 1665 (defining 'under the influence' as 'deprived of clearness of mind and self-control because of drugs or alcohol')."

In an effort to deal with the growing problem of driving "under the influence" of drugs, the Michigan Office of Highway Safety Planning (OHSP) implemented a program to train qualified law enforcement officers to become Drug Recognition Experts (DREs).

In 2009 OHSP requested an assessment of Michigan's Standardized Field Sobriety

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Inside this Issue

Recognizing the Life Saving Power of the Drug Recognition Expert

By: Tom Kimball, Director, National Traffic Law Center

When a Drug Recognition Expert (DRE) goes through his or her grueling training regimen, he or she is taught how to recognize whether a person is under the influence of one or more categories of drugs. Once the International Association of Chiefs of Police (IACP) has certified him or her, he or she puts his or her knowledge to use to determine whether drivers are impaired by drugs.

As part of this training, a DRE is also taught to recognize whether a medical issue that mimics impairment affects the individual he or she is examining. The value of determining that someone is not impaired by drugs, but suffering from a medical condition, sometimes puts a DRE in a situation where the individual examined could suffer great harm or die but for the intervention of the DRE.

In June, at the National Traffic Law Center's Commercial Driver License course in Los Angeles, one such story was shared. Anthony Marks served as a DRE with the Los Angeles Police Department as an auxiliary officer; his full-time job was in pharmaceutical sales. With his pharmaceutical sales job, he traveled to many physicians' offices. Soon, doctors and nurses learned of his drug recognition expertise. On a visit to a medical office in Panorama City, a doctor approached him and asked him for help. Concerned parents brought their 16 year-old son to the doctor believing their son was using drugs. They noticed several changes in his behavior, and they had been to the emergency room once already. The doctor and his assistant performed several tests and took blood samples, but none of the tests indicated drug use. The doctor asked Anthony to perform his 12-step DRE exam. At the end of the evaluation, Anthony told the doctor and the parents the child was not on drugs.

Based upon Anthony's assessment, the doctor directed the parents to take the child to the emergency room for a scan of his brain. The next time Anthony visited the doctor's office, he learned the rest of the story. The CT scan of the brain indicated the child was suffering from a brain bleed. The 16-year-old was a soccer player and hit his head while playing. If the child arrived at the hospital 20 minutes later, he would have died. Several medical doctors missed the diagnosis, but the DRE was able to rule out drugs as the cause of the suspected impairment and, instead, deemed it a medical problem. Anthony Marks cannot tell the story without the hair on his arms reacting.

The doctor credited the DRE with possibly saving the driver's life by recognizing medical signs and symptoms at the scene.

This is not the only time a DRE evaluation has led to life-saving medical action on the part of the DRE officer. Here are four more incidents that occurred in 2016:

Florida

A DRE from the Indian River Shores Public Safety Department was called by a local police department to conduct a DRE evaluation on a subject who exhibited a horrific driving pattern, was obviously impaired, but did not have an odor of alcohol on his breath. The DRE began his evaluation and, during the process, saw signs of a medical problem. The DRE learned the subject was struck in the face with a board approximately two weeks prior and was treated in a trauma unit for a brain bleed. The subject told the DRE that he was cleared by doctors to return to a normal lifestyle. The DRE saw clinical signs and pupil irregularities that led him to determine the subject was still suffering from a medical condition and summoned assistance of medical staff for the subject. Because the DRE followed the proper protocol, his actions allowed a medically-impaired subject to get the proper and necessary medical attention and thwarted a needless criminal prosecution.

Michigan

A DRE was dispatched to a vehicle in a ditch. Upon his arrival, the driver was acting normal, but his speech slurred at times. The driver denied taking drugs or using alcohol. The DRE noted during the HGN test that the driver's pupils were slightly unequal and could not track equally. After further evaluation, the DRE suspected a medical situation and convinced the driver to accept an ambulance transport to the hospital. It was determined that the driver had suffered a mini-seizure at the scene and later, upon arrival at the hospital, suffered a more serious full seizure. The doctor credited the DRE with possibly saving the driver's life by recognizing medical signs and symptoms at the scene.

Wisconsin

A DRE with the Brown County Sheriff's Office responded to a local hospital to conduct a drug influence evaluation on a subject arrested for impaired driving following a crash. It was determined that the suspect ingested marijuana prior to the crash. During the evaluation, the DRE detected that the suspect's demeanor and behavior noticeably changed along with some indicators inconsistent with drug impairment. The DRE stopped the evaluation and summoned the attention of medical staff. It was later learned that the suspect suffered a seizure. The DRE's ability to recognize the onset of a seizure and summon medical staff to assist with this potentially life-threatening condition exemplified the importance of having a DRE involved in a suspected drug impaired driving case.

Wyoming

A Wyoming Highway Patrol DRE was dispatched to the Interstate 25 Port of Entry for a possible impaired truck driver. The port employees stated the driver would not answer any questions and that his speech was slurred. They also stated he nearly hit several vehicles as he pulled into the Port and that he staggered around outside his truck. The DRE spoke with the driver, who appeared pale and disoriented. The driver's speech was slurred but his pupils seemed normal. The DRE could not smell alcohol on his breath and noticed his skin was cold and clammy. The DRE checked his pulse, which was at 40 beats per minute. The driver was able to answer questions but seemed to have trouble speaking. Although the driver stated he did not need one, the DRE called for an ambulance. Within minutes of the ambulance request, the driver's speech became progressively worse

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Opioids Behind the Wheel: Not What the Doctor Ordered

By: Kinga Canike and Kenneth Stecker

The dangers of opioids go beyond their high potential for abuse. Opioid use, both legal or not, is spilling over onto Michigan roads and creating a public safety threat to motorists. As opioid use has increased in our state, so have the dangers they pose on the road because of their potential to impair one's ability to safely operate a vehicle.

Like many other states, Michigan has seen a surge in opioid use in recent years. In 2017, Michigan doctors wrote out 9.7 million prescriptions for opioid drugs.[1] That amounts to 1.2 billion units of opioids—enough to give every Michigan resident about 127 opioid pills.[2]

State data also shows that opioids are prescribed at a higher rate than any other drug category. Between 2012 and 2017, 7.5 million Michigan residents were prescribed a controlled substance. That is almost three-quarters of the state population. Of those 7.5 million residents with prescriptions, 85 percent were prescribed at least one opioid medication.[3]

In addition to people having more access to prescription opioids, more of us are getting behind the wheel after using potentially impairing drugs, including prescription opioids. In 2015, the National Highway Traffic Safety Association (NHTSA) issued results of its latest National Roadside Survey (NRS). The survey was conducted in 48 states to test for the prevalence of alcohol and/or drug use (illegal and legal) in drivers.[4]

The 2013-2014 NRS showed a decreasing trend in alcohol use in drivers. Only 1.5 percent of nighttime weekend drivers had breath alcohol concentrations (BrAC) of .08 grams per 210 liters of blood or higher. That is an 80 percent drop from 1973, the first year NHTSA conducted the study.[5]

In 2017, Michigan doctors wrote out 9.7 million prescriptions for opioid drugs[1] That amounts to 1.2 billion units of opioids—enough to give every Michigan resident about 127 opioid pills.[2]

However, the NRS revealed a different trend for drug use in drivers. The survey focused on drugs that can impair driving ability, including prescription and over-the-counter medications. Drivers testing positive for medications went up from 3.9

percent in 2007 to 4.9 percent in 2013-2014. Overall drug use in drivers increased from 12.4 percent in 2007 to 15.1 percent in 2013-2014.[6]

In addition to the NRS, NHTSA also tracks national data on drug use in drivers killed in car crashes. It is called the Fatality Analysis Reporting System (FARS). In 2016, FARS data revealed that 54.3 percent of fatally-injured drivers were tested for drugs. Of those tested, 10.7 percent were known to have been positive for opioids. The most frequent opioids found in these drivers were oxycodone (OxyContin), hydrocodone (Vicodin), morphine, fentanyl, and methadone. Furthermore, opioid-positive fatally injured drivers went up from 679 or 17 percent in 2006 to 1,064 or 19.7 percent in 2016.[7]

Opioids, also commonly referred to as opiates, are natural or synthetic chemicals that interact with opioid receptors on nerve cells, releasing chemicals in the body. This interaction is what makes opioids very effective at pain management, the primary reason doctors prescribe them. Other side effects of opioid use include euphoria, drowsiness, and sedation. In high doses, opioids may cause respiratory depression and death. Examples of opioids include heroin, morphine, codeine, oxycodone (OxyContin), hydrocodone (Vicodin), fentanyl, methadone, and buprenorphine (Suboxone).

Law enforcement and prosecutors face many challenges when dealing with drugged driving cases, including those dealing with prescription opioids. Some of these challenges are related to how the public perceives the issue of drugged driving. Some of these perceptions are as follows:

- That drugged driving is not a crime;
- That drugs, especially prescription medication and medical marijuana, make people better drivers;
- That there is no law prohibiting drugged driving; and
- That police cannot detect and arrest them if their driving is impaired due to drugs

In Michigan, two programs are training officers and prosecutors to more effectively deal with the issue of drugged driving. These programs, which were developed by NHTSA, are Advanced Roadside Impaired Driving Enforcement (ARIDE) and the Drug Evaluation and Classification (DEC) Program.

ARIDE teaches officers general knowledge on drug impairment. During this two-day training, officers must show that they are proficient in administering Standardized Field Sobriety Tests (SFSTs). The focus is on recognizing drug impairment so that an officer knows when to call in an expert for an additional investigation.[8]

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1. "See trend of opioid prescriptions in your Michigan county," Julie Mack, published June 4, 2018, MLive.
2. Id.
3. Id.
4. Berning, A., Compton, R., and Wochinger, K., Results of the 2013-2014 National Roadside Survey of Alcohol and Drug Use by Drivers (NHTSA February 2015).
5. Id.
6. Id.
7. Hedlund, J., Drug-Impaired Driving: Marijuana and Opioids Raise Critical Issues for States (GHSA May 2018) https://www.ghsa.org/resources/DUID18.
8. http://www.decp.org/training/

Impaired Driving Associated With The Synthetic Cannabinoid 5F-ADB

By: McCain KR, Jones JO, Chilbert KT, Patton AL, James LP and Moran JH

Introduction

The use of novel psychoactive substances (NPS) has grown in popularity throughout the past decade. As of December 2017, there were 779 NPS registered to the United Nations Office on Drugs and Crime (UNODC) Early Warning Advisory on NPS. Synthetic cannabinoids are the most common NPS and are a structurally diverse class with over 250 specific cannabinoids reported to be available[1]. Illegal laboratories make simple modifications to one or more structural components to mimic the effects of ∆9-tetrahydrocannabinol (∆9-THC), evade laboratory detection, and challenge law enforcement, regulatory frameworks, and medical care providers[2]. These new designer drugs are commonly referred to as either "K2" or "Spice". The following case report provides clinical and laboratory information from an impaired driver. Comprehensive analytical testing of blood samples and residual cigarettes confirmed the presence of the synthetic cannabinoid 5-fluoro-ADB (5F-ADB, 5F-MDMB-PINACA), an illicit compound that first appeared in the US in 2014. Knowledge of the pharmacokinetic/dynamic properties of 5F-ADB is important to future efforts to regulate this compound and other NPS.

Case History

A 45-year-old male was witnessed to drive his vehicle into oncoming traffic and swerve the vehicle into a roadside guard rail. When the responding law enforcement approached the vehicle, it remained running and engaged in reverse gear but was lodged against the railing. The driver was asleep, held a lighter in one hand and two blunt cigarettes were on the car seat. The driver responded to verbal stimuli, indicated that he was "high" and that the cigarettes "possibly" contained marijuana. He denied alcohol consumption. Law enforcement reported that the driver had bilateral horizontal and vertical nystagmus, no odor of intoxicants,and subsequently failed the Walk-and-Turn (unable to maintain heel to toe position, lost count while walking, and raised arms repeatedly) and One Leg Stand (put foot down and used hands to balance) field sobriety tests. He was arrested for operating a vehicle while intoxicated and transported to the hospital.

Table 1: Immunoassay Screening Results

Test	Result
Meprobamate	Negative
Amphetamine	Negative
Barbiturates	Negative
Benzodiazepines	Negative
Methadone	Negative
Opiates	Negative
Cocaine metabolites	Negative
Zolpidem	Negative
Cannabinoids	Negative
Tramadol	Negative
Fentanyl	Negative

The driver's blood sample and the blunt cigarettes were collected and sent to a state-level ISO-17025 accredited laboratory. Plant material from the cigarettes was confirmed via gas chromatography mass spectrometry (GC-MS) to contain the synthetic cannabinoid derivative 5F-ADB. Alcohol testing of the blood sample was negative and immunoassay (Biochip Chemiluminescent Assay) screening was negative for the drugs/drug classes listed in Table 1.

Due to the circumstances surrounding the case and the detection of a synthetic cannabinoid in the plant material, comprehensive toxicological testing of the blood sample was referenced to a private ISO-17025 accredited laboratory (PinPoint Testing, LLC, Little Rock, Arkansas). Previous liquid-chromatography tandem mass-spectrometry (LC-MS/MS) methods validated for detecting synthetic cannabinoids and other designer drugs were modified to detect 5F-ADB and 5F-ADB metabolite 7 (Cayman Chemical Company, Ann Arbor, MI)[3-5]. In brief, 0.25 mL of sample was pretreated with 0.25 mL of 0.5M ammonium hydroxide and extracted with two 0.90 mL fractions of ethyl acetate after loading on Biotage ISOLUTE® SLE+ Supported Liquid Extraction 96-well plates (Biotage, LLC, Charlotte, NC). The eluate was evaporated under a gentle stream of nitrogen to complete dryness and reconstituted in 100% methanol. The extracts were injected on a Phenomenex Kinetex phenyl-hexyl analytical LC column (2.6µm 50x4.6mm), ramping from 95% aqueous mobile phase (10mM ammonium formate) to 100% organic mobile phase (0.1% formic acid in methanol) over 4 minutes and holding for 1 minute, before returning to initial conditions for a 2-minute column equilibration. 5F-ADB Metabolite 7 was confirmed in the blood sample at 26.37 ng/mL (Figure 1). Neither the parent drug or other confounding drugs were detected in the blood specimen.

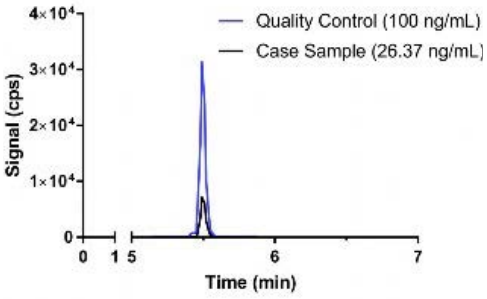

Figure 1: A representative LC-MS/MS chromatograph showing the Specific Reaction Monitoring experiment used to quantify the 5F-ADB Metabolite 7 (364.2 → 318.1 m/z) in the case sample (shown in black) overlaid with a quality control sample (shown in blue). Chromatography of all calibrators and quality control samples were similar throughout the analytical run. The LC-MS/MS analyses were performed on an Agilent 1260 quaternary liquid chromatography system (Santa Clara, CA) coupled to an Agilent 6420 tandem mass spectrometer (Santa Clara, CA).

Discussion

Synthetic cannabinoid users are attracted to synthetic marijuana due to drug potency and the expectation of euphoric effects. However, highly variable and serious adverse clinical effects including altered mental status, cardiotoxicity, seizures, acute kidney injury, hyperthermia, and death have been reported[2]. While these effects have been well documented, the degree to which users are impaired in the context of motor vehicle operation has not been thoroughly addressed in literature.

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Fostering CDL Partnerships on the "Road to Zero"

By Romana Lavalas, Senior Attorney, National Traffic Law Center

In May, the American Association of Motor Vehicle Administrators (AAMVA), in conjunction with the Federal Motor Carrier Safety Administration (FMCSA), held its Commercial Driver's License (CDL) Coordinators/Information Technology (IT) Meeting in Columbus, Ohio. AAMVA is the organization that represents the interests of each state's driver's licensing authority (SDLA), the agency that administers and promulgates motor vehicle regulations. In other words, AAMVA is the agency that represents your departments of motor vehicle public safety and/or transportation, the employees of which maintain driver's license records and administer driver's license testing.

Jeanine Howard, the National Traffic Law Center's (NTLC) FMCSA Staff Attorney, and I attended this three-day meeting of motor vehicle administrators, motor vehicle IT professionals, and federal regulators (FMCSA) to discuss how continued partnerships among these entities can lead to a decrease in commercial motor vehicle (CMV) fatalities.

This meeting focused on AAMVA's CDL Coordinators and IT Managers. CDL Coordinators are the people in each state's SDLA who are responsible for overseeing the administration of their state's CDL licensing program. The IT Managers are the people responsible for assuring that the technology platforms used to transmit licensing and conviction information is up to date. This meeting was an opportunity for state and federal partners to discuss the administration of the FMCSA's CDL mandates and to share challenges and achievements in the administration of their CDL programs.

The NTLC was invited to participate in a session entitled, "Partnerships in Assuring Court Compliance." This session was designed to highlight the efforts of the NTLC and other partners' efforts to combat the practice known as Masking (see 49 CFR 384.266), or essentially any effort that prevents traffic convictions from reaching a CDL holder's driving record. During this session, I asked the SDLAs to do four things that are particularly relevant to those of you tasked with the enforcement of CDL and CMV-related regulations.

First, I suggested that SDLAs should become acquainted with their Traffic Safety Resource Prosecutor (TSRP) and/or become more acquainted with the prosecutors in their states who routinely subpoena SDLA employees for traffic trials.These existing relationships serve as a resource for the SDLAs to educate traffic-handling prosecutors about the special rules applicable to CDL holders. It is likely that each SDLA is contacted by at least one prosecutor in every office to subpoena SDLA employees to testify in DUI and general traffic cases.These prosecutors are in the best position to be educated by SDLA personnel about the consequences of traffic convictions on a CDL holder's driving record.

Second, I encouraged SDLAs to reach out to the NTLC to identify the point during the adjudication process the SDLAs are seeing evidence of Masking convictions, whether it's roadside or in the courtroom with prosecutors and judges. The NTLC has direct access to the network of TSRPs nationwide who regularly communicate with state prosecutors and judges about traffic-safety matters. The NTLC may be able to assist the SDLA with educating others about Masking by reaching out to an individual state's TSRP.

Third, I reminded the SDLAs that CDL holders convicted of felonies using motor vehicles are subject to disqualification. I asked for their support to keep these CDL holders off the roads by ensuring that these felony convictions, once transmitted to the SDLA by the courts or prosecutors themselves, are properly recorded on the CDL holder's driving record resulting in the disqualification of a CDL.

Finally, I encouraged SDLAs to invite the NTLC to join them at their states' Highway Safety Judicial, Prosecutor and/or Law Enforcement meetings. The FMCSA attorneys at the NTLC are available to speak to these groups about FMCSA regulations. Further, because the NTLC is grant funded, the NTLC can use grant funding to speak to these groups at no cost to the group making the request.

Ultimately, this session served to emphasize the vital role that prosecutors and judges play in the complete and accurate recording of convictions on the driving records of CDL holders. This includes prosecutors and judges being aware of the federal prohibition on the practices of deferral and diversion of CDL-related offenses, as well as keeping CDL holders accountable to the high standards that their skills and training demand. It is only through cooperation that we will drive down deaths caused by CMVs on the "Road to Zero."

For Your Information

Criminal Justice Information Center

The MSP Criminal Justice Information Center (CJIC) started as the Criminal Investigation and Identification Division in 1935. Its primary mission at the time was focused on fingerprints. Michigan started requiring the fingerprinting of all felons in 1925 and today is one of six states that still base criminal histories 100 percent on fingerprints. The CJIC is divided up into five sections: Security and Access, Criminal History, Field Support, Statewide Records Management, and Incidents. Within those five sections are 13 units, covering 145 positions. Dawn Brinningstaull is the director of CJIC, taking over in 2010 for Capt. Charles Bush.

All facets of the criminal justice system throughout the state, not just the MSP, rely on information the CJIC maintains. That includes, but is not limited to; criminal histories, sex offenders, pistol registrations, concealed people licenses, local law enforcement case management, traffic crashes, and crime data. The CJIC is also responsible for the administration of the Law Enforcement Information Network (LEIN), audit and training of CJIC programs, MSP's records management and officer daily systems, and the Michigan Criminal Justice Information Network.

The Traffic Crash Unit processes approximately 300,000 traffic crashes every year and in 2017 LEIN processed more than 360 million transactions.

You can learn more about the CJIC by clicking here.

GTSAC Seeks Nominations for Outstanding Traffic Safety Achievements

Each year the GTSAC honors individuals, organizations, and programs by presenting awards for outstanding traffic contributions to traffic safety in Michigan. This is a chance to honor the best of the state's traffic safety community: people of all ages who are motivated to seek changes and improvements and who work effectively as an individual or as part of a team.

OUTSTANDING TRAFFIC SAFETY ACHIEVEMENT AWARD
Award winners will be individuals or organizations whose contributions during 2018 are judged to stand above others in the state. Nominations must include a well-defined problem and present clear and measurable results.

STUDENT AWARD
The GTSAC will recognize a high school or college student engaged in a traffic safety program.

RICHARD H. AUSTIN LONG-TERM TRAFFIC SAFETY ACHIEVEMENT AWARD
Award winners will be individuals or organizations judged to best represent "the spirit of traffic safety" through a sustained, long-term contribution (10 years or longer) and commitment to traffic safety in Michigan.

INDIVIDUALS, COALITIONS, ASSOCIATIONS, ORGANIZATIONS, AGENCIES
Multiple programs or a single, long-term traffic safety effort are eligible. GTSAC member agencies are not eligible.

The GTSAC will present the awards at a luncheon March 20, 2019, during the Michigan Traffic Safety Summit at the Kellogg Center in East Lansing.

Award nominations must be received by November 2, 2018. An electronic version of the nomination form is available at Michigan.gov/gtsac.

PAAM's Traffic Safety Training

PAAM's Traffic Safety Training Program has several trainings over the next few months and there is still time to register. Posted below are the links for each training. The links will take you to a more detailed description of the event and the registration page. As always if you have trouble with the links you can also view current trainings on the Michigan Prosecutor website at www.michiganprosecutor.org and click on the TSTP training calendar.

Please contact Amy Gronowski at gronowskia@michigan.gov with any questions.

Under the Influence of Cannabis - Understanding the Highway High
October 25, 2018 – Bay City, Michigan

Commercial Driver's License Enforcement Webinar
October 26, 2018 - 12:15-1:00 EST

Lethal Weapon 2: Crash to Courtroom
November 7-8, 2018 – Grand Rapids, Michigan

David M. Schieber Award Given to Special Assistant Attorney Paul Fehrman

Special Assistant Attorney General Paul Fehrman received the 2018 David M. Schieber MADD/OHSP Lifesaver Award at PAAM's Annual Banquet last month. Mr. Fehrman is currently assigned to Genesee County Prosecutor David Leyton's staff, where he prosecutes major felonies. In 2017, defendant Brenda Hazard ran over and killed a pedestrian. Defendant's blood was positive for cocaine. Through his diligent efforts, Mr. Fehrman convicted the defendant of second degree murder and operating while intoxicated (OWI) causing death. She was sentenced to 20 to 40 years prison for second degree murder and 7 to 15 years for OWI Causing Death. Paul is a 1983 graduate of the University of Detroit Law School, and a former Navy officer, who retired with the rank of Lieutenant Commander. The award is given annually to a Michigan prosecutor whose extraordinary work exemplifies the ideals of MADD and the protection of victims. It is named after the late Kent County Assistant Prosecuting Attorney David M. Schieber. Mr. Schieber was a passionate and skilled prosecutor for 28 years before succumbing to cancer in 2009.

left to right: Michigan Traffic Safety Resource Prosecutor Kenneth Stecker, Special Assistant Attorney General Paul Fehrman, and Genesee County Prosecuting Attorney David Leyton

Why You Want A DRE on Your Next Drugged Driving Case *(continued from page 1)*

Testing Program through the National Highway Traffic Safety Administration. One of the recommendations from that assessment was that Michigan become a Drug Evaluation and Classification Program (DECP) state.

OHSP began in earnest to establish itself as a DECP State. It assigned a state DRE Program Coordinator to determine the feasibility of Michigan becoming a DECP state. The DRE Program Coordinator created a DRE Steering Committee to include four current DREs in the state, Michigan's Traffic Safety Resource Prosecutor, and a retired sergeant and former DRE officer with the Los Angeles Police Department Sergeant.

In October 2010, the International Association of Chiefs of Police granted Michigan approval as the 47th DECP state. As a DECP state, Michigan was allowed to conduct its own DRE School.

A DRE is a law enforcement officer who is trained to recognize impairment in drivers who are under the influence of drugs other than, or in addition to, alcohol. Currently, there are 138 DRE law enforcement officers in the State of Michigan.

Although DREs may initiate their own arrests for operating under the influence of drugs, most of the time DREs are called upon by the arresting officer. He or she may request the expertise and assistance of a DRE officer after making an arrest for drugged driving.

A DRE should be requested to conduct an evaluation for drug impairment when a person's signs and symptoms are not consistent with his/her blood-alcohol concentration (BAC). Simply stated, the arrestee may appear more intoxicated that the alcohol level alone would suggest. Law enforcement agencies may seek a drug-influence evaluation by a DRE whenever an individual is arrested for OWI and produces a BAC below .08%. In addition, an evaluation may occur whenever the arrestee's degree and/or type of intoxication are not consistent with his/her BAC.

A DRE is trained to determine the following:

- Whether an individual's impairment is not consistent with the BAC;
- Whether an individual is suffering from a medical condition that requires immediate attention or is under the influence of drugs; and
- Whether an individual is under the influence of a specific category or categories of drugs.

In order to make these findings, DREs use a 12-step standardized and systematic process. It is standardized because all DREs, regardless of agency, use the same procedure in the same order on all suspects. It is systematic in that it logically proceeds from a BAC, through an assessment of both clinical and psycho-physical signs of impairment, to toxicological analysis for the presence of drugs.

Based on the totality of the evaluation, the DRE forms an opinion as to whether or not the subject is impaired. If the DRE determines that the subject is impaired, the DRE will indicate what category or categories of drugs may have contributed to the subject's impairment. The DRE bases these conclusions on his or her training and experience and the DRE Drug Symptomatology Matrix, which is broken down into seven drug categories.

Why You Want A DRE on Your Next Drugged Driving Case

The seven drug categories contained in the matrix are as follows:

1. Central Nervous System Depressants
2. Central Nervous System Stimulants
3. Hallucinogens
4. Dissociative Anesthetics
5. Narcotic Analgesics
6. Inhalants
7. Cannabis

The DRE process is not a test; rather, it is a method for collecting evidence. Nevertheless, there have been challenges to the admissibility of DRE testimony.

In Michigan, courts employ the *Daubert* standard for determining the admissibility of scientific evidence.

The *Daubert* standard derives from the United States Supreme Court decision of *Daubert v. Merrell Dow Pharmaceuticals, Inc.*, 509 U.S. 579 (1993). Pursuant to *Daubert*, courts serve as a "gatekeeper" for all scientific evidence, regardless of newness or novelty. Scientific evidence is admissible if the court determines that the underlying "reasoning or methodology" is "scientifically valid."

Although Michigan higher courts have not addressed the issue of DRE testimony under the *Daubert* standard, other *Daubert* states that considered the admissibility of DRE testimony have ruled it admissible under *Daubert*. Some of these states are Nevada, Oregon, Iowa, Hawaii, New Mexico, and Nebraska.

A prosecutor arguing a *Daubert* motion should emphasize that the DRE protocol is not novel or new, but rather a list of procedures that have been used by medical science and the law enforcement community for many years.

In addition to DRE-trained officers, prosecutors in Michigan can also attend the two-week school to gain a better understanding of drugs and impairment. To date, there are 38 DRE-trained prosecutors in Michigan. Many times these prosecutors are handling some of the most egregious drugged driving cases in the state. Their specialized training in drugged driving equips them with the skills necessary to prosecute these challenging cases.

In 2013, a DRE-trained prosecutor in St. Clair County handled the drugged driving case involving Lisa Bergman, who killed two teens after her truck crossed the center line and crashed head-on into their truck. At the time, Bergman was under the influence of drugs, including the prescription medication carisoprodol or Soma. The DRE-trained prosecutor successfully presented evidence at trial of seven prior incidents in which Bergman had been investigated for driving under the influence of prescription medication and other drugs. A jury convicted her of two counts each of second-degree murder, operating while intoxicated causing death, and operating a motor vehicle causing death while license suspended.

In 2014, a DRE prosecutor in Eaton County handled the case against Cynthia Toepler who was convicted by a jury of driving under the influence of prescription medications, driving with a suspended license, and driving away from the scene of a crash. A witness first observed Toepler in a McDonald's drive thru. She was driving a car and talking incoherently. Another witness observed her drive over a curb and some shrubbery. She then rear-ended a vehicle and continued to drive away before officers blocked her. Toepler was mumbling and unstable on her feet. She was unable to perform any sobriety tests and was arrested. A DRE officer evaluated Toepler and concluded that she was impaired by a central nervous system depressant and a narcotic analgesic. Testing on Toepler's blood sample confirmed the presence of seven substances, including Xanax, Tramadol, Fluoxetine, Cyclobenzaprine, and metabolites of three other drugs.

Finally, a DRE-trained prosecutor effectively prosecuted a case in St. Clair County where Theresa Gafken drove over a 100 miles per hour in a 25-mile-per-hour zone and killed a woman after running a red light. On September 12, 2018, a jury convicted her of second-degree murder. Gafken's blood sample came back positive for THC, the psychoactive ingredient in marijuana.

The DRE Program in Michigan is one of the most effective tools in the battle against impaired driving, especially where drugs are involved. Impaired drivers are killing and seriously injuring innocent drivers on our highways. While DREs cannot prevent this from happening, they can help minimize it. Our streets, highways, and communities deserve it!

To learn more about Michigan's DRE Program, please contact Mike Harris, the DRE Coordinator and Law Enforcement Liaison for the Michigan Office of Highway Safety Planning.

Also the following publications are helpful in understanding more about the DRE Program.

"The Drug Evaluation and Classification (DEC) Program, Targeting Hardcore Impaired Drivers," American Prosecutors Research Institute.

"Drug-Impaired Driving: Understanding the Problem & Ways to reduce It, A Report to Congress," National Highway Traffic Safety Administration.

For more information on this article and PAAM training programs, contact Traffic Safety Resource Prosecutors Ken Stecker at (517) 334-6060 (x827) or at steckerk@michigan.gov or Kinga Canike at (517) 334-6060 (x816) or at canikek@michigan.gov. Please consult your prosecutor before adopting practices suggested by reports in this article. Discuss your practices that relate to this article with your commanding officers, police legal advisors, and the prosecuting attorney before changing your practice.

Recognizing the Life Saving Power of the Drug Recognition Expert *(continued from page 2)*

and eventually got to the point the DRE could not understand him. The DRE then noticed the right side of the driver's face appeared to droop slightly and requested the ambulance to expedite. Once the ambulance arrived on scene, the driver was taken to the local Regional Medical Center. Life Flight later took the driver to Denver because he suffered a massive stroke. It is clear the DRE's intervention saved the man's life.

Expert Karl Citek, MS, OD, PhD, FAAO, was not surprised by any of these events. When asked about why DRE's can discern medical conditions from impairment, he indicated:
"Most medical conditions that can cause impairment can readily be distinguished from the effects of alcohol and/or drug intoxication. The most common conditions that could affect a person while driving, and that an officer would expect to encounter, include heart attack, hypoglycemia (a.k.a.insulin shock) in persons with diabetes, cerebral vascular accident (a.k.a.stroke), and trauma, either from a motor vehicle crash or other injury. None of these nor most other medical conditions will cause the same types of clues as — or clues that appear identical to — those caused by intoxication.

Intoxication is expected to cause specific and known changes in physical and physiological responses that are roughly symmetric for the right and left parts of the body. For example, if a particular intoxicant is known to cause pupil dilation or difficulty on the One-Leg Stand Test, then both pupils will be dilated or test clues will appear when performed on either leg, respectively. In contrast, for example, stroke or trauma can potentially cause a problem on only one side.

If an officer observes an abnormal response during an evaluation, he/she determines if it is consistent with intoxication. For example, if nystagmus is present, does it occur with the head upright or tilted? Does it occur only when looking to the side rather than straight ahead? And are the eye movements horizontal rather than vertical or rotatory? In each instance, the former condition is most consistent with intoxication; the latter, while being abnormal and possibly indicative of impairment, would not be consistent with intoxication."

The lifesaving skills of DREs have an additional impact. No officer ever wants to be the one to arrest an innocent person. No officer wants to be the one to later learn the person he arrested died in a jail cell because of a medical problem. An officer who observes behavior inconsistent with intoxication should take advantage of the specialized training and experience of a DRE officer. There is no greater work on this earth than to save the life of another. Congratulations to the officers involved in these five cases. If you know of similar situations please send them to us for inclusion in future editions of *Between the Lines*.

Editors Note: The National Traffic Law Center is a division of the National District Attorneys Association. Tom Kimball is the Program Director and can be reached at tkimball@ndaajustice.org

Opioids Behind the Wheel *(continued from page 3)*

That expert would be a Drug Recognition Expert (DRE), an officer with advanced training in drug impairment. These officers must successfully pass the DEC Program, which involves two weeks of classroom studies followed by one week of hands-on training on individuals who have ingested drugs. DRE officers are trained to conduct a 12-step evaluation to determine whether an individual is impaired by drugs and what category of drug or drugs is causing that impairment.[9] Currently, there are approximately 138 DRE-trained officers in Michigan. Thirty eight prosecutors have also attend the two-week school in order to better present drugged driving cases to a jury.

DRE officers are trained to recognize impairment of drugs that can affect the central nervous system and impair a person's normal faculties. In the DRE world, these drugs are broken down into seven drug categories. All opioids, including those prescribed by a doctor, fall under the Narcotic Analgesics drug category. Signs that DREs look for in drivers impaired by these drugs include some of the following indicators:

- Depressed reflexes
- Droopy eyelids
- Drowsiness
- Dry mouth
- Facial itching
- Inability to concentrate
- Slow, low, raspy speech
- Slow deliberate movements [10]

In Michigan, taking a drug that was prescribed by a doctor is not a defense to an impaired driving charge. Under our law, driving while impaired by a prescription opioid may be charged either under the Operating While Intoxicated [MCL 257.625(1)] or Operating While Visibly Impaired [MCL 257.625(3)] statutes as an intoxicating substance.

There is no "per se" level of impairment for intoxicating substances under our law. Therefore, it is very important that officers do a thorough investigation and establish evidence of impairment in all three detection phases—Vehicle in Motion, Personal Contact, and Pre-Arrest Screening. If the case goes to trial, officers must be prepared to explain to a jury why that individual was impaired due to their medication.

One of the best tools to deal with the issue of drugged driving now is to be trained to recognize this impairment so that these drivers can be stopped before they seriously injure or kill others. Drugged driving is a serious issue and unfortunately one that is not going away anytime soon. Law enforcement officers are at the forefront of the battle to keep our roads safe from impaired drivers.

9. Id.
10. https://ndaa.org/wp-content/uploads/1033558_DREMonograph_FinalWEB.pdf

Impaired Driving Associated With The Synthetic Cannabinoid 5F-ADB *(continued from page 4)*

The Drug Evaluation and Classification Program profile for marijuana includes well characterized eye findings (e.g., absence of horizontal or vertical nystagmus, the lack of convergence, normal to dilated pupils, normal to slowed pupillary reaction to light, injected conjunctivae), elevated heart rate, elevated blood pressure, normal to elevated temperature, body/eyelid tremors, confusion, relaxed inhibitions, poor performance on Standardized Field Sobriety Test and the odor of marijuana[6]. From the limited reports describing impaired driving linked to synthetic cannabinoid use, there appears to be variation from the profile utilized by Drug Recognition Experts to assess for marijuana associated impaired driving.

One retrospective study compared the differing effects of marijuana to synthetic cannabinoids within a population of arrested drivers and concluded there was greater impairment (e.g., confusion, disorientation, and incoherence) among those under the influence of synthetic cannabinoids, compared to those under the influence of marijuana[5]. A review of impaired driving cases in which AB-CHMINACA and AB-PINACA were detected in drivers' biologic samples found that clinical indicators identified by drug recognition experts differed from those classically associated with marijuana use. For example, impaired drivers were found to have the presence of horizontal and vertical nystagmus, the lack of convergence was not always present, lowered blood pressures, and infrequent presence of eyelid tremor[7]. Louis et al examined impaired driving cases associated with the use of XLR-11 and UR-144.[8] They noted the slurred speech, lack of convergence, and body and eyelid tremors as the most consistent findings among 12 drivers examined by drug recognition experts[8]. However, physical signs and symptoms are not specific to synthetic cannabinoids, are highly variable, and may be caused by non-drug-related neurologic conditions.

5F-ADB is an indazole synthetic cannabinoid receptor agonist that has greater potency than ∆9-THC and earlier generation synthetic cannabinoids[9]. The first human use reports involving 5F-ADB appeared in 2014. Common methods of use include smoking and vaping[10]. In laboratory-confirmed cases of use, symptoms associated with 5F-ADB include confusion, agitation, psychosis, altered consciousness, headache, dizziness, mydriasis, and vomiting[10,11]. On the basis of multiple analytically confirmed fatalities, 5F-ADB is regarded as one of the most dangerous synthetic cannabinoids[12].

The United States Drug Enforcement Administration provided notice of intent to temporary place 5F-ADB into schedule I of the U.S. Controlled Substance Act in December of 2016[13]. Regulatory action often impacts several motivational factors including availability, price, and legal consequence. However, the ability of these drugs to evade detection in standard laboratory practices (as illustrated by this case report), regardless of regulations, remains as a primary motivational factor. Laboratories are challenged by the ever-changing drug market and the lack of specific analytical assays to accurately identify 5F-ADB and downstream metabolites. This report is the first to show the utility of using 5F-ADB Metabolite 7 as a biomarker for 5F-ADB use. The lack of the parent 5F-ADB in the blood specimen suggests that this synthetic cannabinoid has a relatively short half-life in vivo when inhaled, or that this cannabinoid is not stable in human blood. Future analysis of other impaired driving cases from 5F-ADB exposure will provide data needed to regulate this dangerous NPS.

Study Approval

The UAMS Institutional Review Board approved this study (UAMS IRB # 206735).

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Amy Patton, Joseph Jones, and Jeffery Moran are employees and/or owners of PinPoint Testing, LLC.

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PROSECUTING ATTORNEYS ASSOCIATION OF MICHIGAN

The Yellow Light Legal Update

Volume 19, Issue 1 **October 2018**

Clicking on case names (highlighted in blue text) will take you directly to the PDF version of the opinions online.

Published Cases

Michigan Court of Appeals

Acting on a tip from road patrol officers, a Troy Police Detective and members of the Oakland County Narcotics Enforcement Team arrived at the defendant's home. The detective spoke with defendant, who told him that she lived there with her husband, and her two children. He asked defendant for consent to search the basement, later testifying that "it was obvious to [him] at that point that marijuana – there was marijuana growin' [sic] down there."

Defendant replied that "she wasn't sure," and that she wanted to "contact her attorney." Approximately one hour later, defendant's attorney subsequently told the detective "they had consent to search the home." The search revealed an indoor marijuana grow operation in the basement. The

detective testified that there were "126 plants located in three different rooms along with approximately 550 grams of marijuana buds on a drying rack." Additionally, "there were two digital scales, Ziploc bags commonly used to package narcotics for sale, grow lights, and a watering system." The attorney subsequently gave police permission to search the rest of the house; a "Glock 19 9mm handgun" was discovered in a bedroom safe that was unlocked by defendant.

Defendant was charged with one count of delivery or manufacture of 20 marijuana plants or more, but less than 200 marijuana plants, and one count of delivery or manufacture of marijuana, MCL 333.7401(2)(d)(iii) as well as two counts of possession of a firearm during the commission of a felony (felony firearm). She filed an assertion of affirmative defense, arguing she was a medical marijuana patient entitled to immunity under § 4 of the MMMA, MCL 333.26424, as well as a defense under § 8 of the MMMA, MCL 333.26428. She also moved to dismiss the possession with intent to deliver marijuana count and the associated felony-firearm count under § 4 of the MMMA.

Here, the "defendant possessed a quantity of marijuana that, according to her own argument, did not constitute usable marijuana. Thus, under the plain language of the MMMA and Carruthers, she was not entitled to § 4 immunity

Defendant's motion did not challenge "126 marijuana plants" seized from her home. Instead, relying on *People v Manuel,* 319 Mich App 291; 901 NW2d 118 (2017), she argued that 550 grams of marijuana on drying racks in the basement was unusable because it was drying and must be excluded when considering her claim of immunity under § 4 of the MMMA. The prosecutor contended that the court's interpretation of § 4 of the MMMA in *People v Carruthers,* 301 Mich App 590, 609; 837 NW2d 16 (2013), controlled requiring the court to consider the total amount of marijuana defendant possessed, not just the total amount of usable marijuana.

The Court of Appeals agreed with the prosecution. "We decline defendant's invitation to ignore the second prong of the *Carruthers* analysis, as we are bound to apply it. Although the MMMA was amended after *Carruthers* to add certain protections relative to the medical use of usable marijuana equivalents, the statutory language interpreted in *Carruthers* remains today as it was then in all pertinent respects. *Carruthers* is therefore binding with respect to that statutory interpretation…" Here, the "defendant possessed a quantity of marijuana that, according to her own argument, did not constitute usable marijuana. Thus, under the plain language of the MMMA and *Carruthers,* she was not entitled to § 4 immunity."

People v. Mansour, case no. 342316, decided July 19, 2018.

Unpublished Cases

(An unpublished opinion is not binding as precedent but may have persuasive value in court. See, Michigan Court Rule 7.215)

The Michigan State Police (MSP) observed the defendant, Mountain driving with no hands on the steering wheel. Mountain was focused on the cell phone he held in one hand, and was running the other hand through his hair.

The trooper smelled marijuana during the traffic stop and searched the car. Marijuana, Xanax, cocaine, a shot-gun and $13,370 were found during the search.

The trial court found the traffic stop violated the Fourth Amendment and suppressed the evidence.

The Yellow Light Legal Update is an addition to The Green Light News.
With this insert, you can keep a notebook for just the traffic safety cases.

MCL 257.602b prohibits texting while driving, but the evidence showed Mountain had been looking at Snapchat.

The Circuit Court of Appeals reversed, citing *Heien v North Carolina,* __ US

__ ; 135 S Ct 530, 536; 190 L Ed 2d 475 (2014). "We have recognized that searches and seizures based on mistakes of fact can be reasonable. . . . The limit is that the mistakes must be those of reasonable men."

People v. Mountain, case no. 341531, decided September 18, 2018.

The Michigan Court of Appeals (COA) held that the trial court properly admitted defendant's roadside statements made to a trooper during an OWI investigation.

Defendant was convicted by a jury of operating while intoxicated, third offense, and driving while license suspended. Evidence at trial revealed that defendant struck one vehicle, missed striking a second vehicle by a few feet, and struck the guardrail. A trooper who responded to the scene testified that he asked defendant what had occurred and defendant "said he was being an idiot" and "clipped a guy." The trooper also asked defendant if he had been drinking and if so how much. Defendant answered in the affirmative and said he drank "quarts." He later clarified that he drank three quarts. Further questioning from the trooper led to more incriminating statements from defendant.

In response to a motion to suppress defendant's statements because the trooper had not given defendant his Miranda rights, the COA ruled that defendant was not in custody at the

"A police officer may ask general on-the-scene questions to investigate the facts surrounding a crime without implicating the holding in Miranda."

time the trooper questioned him and therefore Miranda did not apply. The COA quoted *People v. Ish*, 252 Mich App 115, 118 (2002), stating, "A police officer may ask general on-the-scene questions to investigate the facts surrounding a crime without implicating the holding in *Miranda*."

Affirmed.

People v. Walter Jones, case no. 338472, decided September 13, 2018.

The conviction arose out of an incident where defendant rammed his car so hard into the back of the victim's car that it sent victim's car across multiple lanes of highway traffic and killed him almost instantly. Witnesses at trial testified to observing defendant driving erratically and at excessive speeds immediately before the crash.

At trial defendant argued that the victim pulled into his lane suddenly causing defendant to lose control of his car. He argued that this act constituted a superseding cause of the

He argued that this act constituted a superseding cause of the crash, breaking the causal connection between defendant's conduct and the victim's death.

crash, breaking the causal connection between defendant's conduct and the victim's death. In support of this theory, defendant wanted to admit into evidence victim's .20 blood alcohol content (BAC) at the time of the crash and his two prior OWI convictions. The trial court denied his request to admit the evidence. That denial was the issue on appeal.

In affirming the conviction, the COA held the following: "Taking into account not just the defense strategy, but the weight and strength of the untainted evidence and the proofs as a whole, we are satisfied defendant has failed to demonstrate it is more likely than not that the error in excluding the evidence of the victim's BAC was outcome determinative."

Affirmed.

People v. Thabo Jones, case no. 330759, decided August 28, 2018.

The Michigan Court of Appeals affirmed defendant's convictions for operating/maintaining a meth lab and possession of a meth lab after a traffic stop that resulted in a search of his property.

On appeal, defendant argued that evidence gathered from his garage and house should have been suppressed because the search warrant was based on statements that he made to the officer during the traffic stop. Defendant argued that the officer's questioning during the stop was a police custodial interrogation and therefore the officer was required to give him his Miranda warnings, which he did not do.

The Court of Appeals disagreed. It held that defendant's statements about meth use were made during

a general conversation with the officer and during a time when the defendant was free to terminate the conversation.

Affirmed.

People v. Bowers, case no. 339265, decided July 19, 2018.

Defendant appealed as of right his jury conviction of vehicular manslaughter pursuant to MCL 750.321. Defendant's conviction arose from the death of the 81-year-old victim, who died after he was struck by a vehicle driven by defendant.

According to witnesses, defendant was driving a white Impala and engaged in an argument with the victim, who was outside defendant's vehicle. Testimony indicated that as the victim was walking toward defendant's vehicle, defendant had a path in which he could have driven forward, but he instead reversed his vehicle, stated "Do you wanna' go?," and then accelerated forward while maneuvering his vehicle into the victim's path, striking him, and then drove off. The victim died the next day from his injuries.

Defendant argued that the evidence was insufficient to support his manslaughter conviction, or alternatively, that he was entitled to a new trial because the jury's verdict was against the great weight of the evidence. The Michigan Court of Appeals disagreed with both arguments.

Affirmed.

People v. Coakley, case no. 337318, decided July 12, 2018.

New Laws Affecting Motor Vehicles

Public Act 147 of 2018, effective August 14, 2018
Attaching on rear of vehicle

Under MCL 257.225(2) of the Michigan Vehicle Code, a registration plate must be "in a place and position that is clearly visible" and "maintained free from foreign materials that obscure or partially obscure the registration information and in a clearly legible condition." The Michigan Supreme Court's holding in *People v. Dunbar* that MCL 257.225(2) requires the registration plate, and surrounding attachments, to be configured to ensure the unobstructed visibility of the registration plate, is no longer the law in Michigan. In that

The Court concluded that MCL 257.225(2) was violated where a towing ball attached to a rear truck bumper partially obstructed the officers' view of the registration plate

case, the Court concluded that MCL 257.225(2) was violated where a towing ball attached to a rear truck bumper partially obstructed the officers' view of the registration plate.

Following *Dunbar,* Public Act 147 of 2018, effective August 1, 2018, amended MCL 257.225 to state that the "attachment to the rear of a vehicle of a tow ball, bicycle rack, removable hitch, or any other device designed to carry an object on the rear of a vehicle, including the object being carried," does not violate MCL 257.225(2). Officers are reminded that MCL 257.225 includes additional requirements relating to a registration plate.

For example, it must be securely fastened in a horizontal position and attached at a height of not less than 12 inches from the ground, measured from the bottom of the plate. MCL 257.225(2). Also, a person shall not obscure or partially obscure registration information by attaching a name plate, insignia, or advertising device to a registration plate or operate a motor vehicle with such a plate. MCL 257.225(4) and (5). A violation of MCL 257.225 is a civil infraction. MCL 257.225(7).

Public Act 280 of 2018, effective August 1, 2019
Overtaking and passing on right of another vehicle or bicycle

Public Act 280 of 2018, effective August 1, 2019, amends the Michigan Vehicle Code to require the driver of a vehicle passing a bicycle to pass at a distance of 3 feet when practicable.

Under the law, the driver of a vehicle overtaking a bicycle going in the same direction and passing it on the left would have to pass at a distance of 3 feet to the left of the bicycle or, if that distance is impracticable, at a safe distance to the left at a safe speed. If safe to do so, the driver could drive to the left of the center

of the highway to pass the bicycle, even if the vehicle is in a no-passing zone at the time.

The driver of a vehicle overtaking a bicycle going in the same direction and passing it on the right—if otherwise allowed to pass on the right under Section 637—would have to pass at a distance of 3 feet to the right of the bicycle or, if that distance is impracticable, at a safe distance to the right at a safe speed.

A person who violated these proposed requirements would be responsible for a civil infraction. [Improper passing is a 3-point violation for a driver's record under the Code.]

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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