TRAFFIC SAFETY LEGAL UPDATE

JANUARY 2016

Outline designed to update prosecutors and law enforcement on recent changes in criminal cases as it pertains to traffic safety issues.

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UNITED STATES SUPREME COURT DECISIONS

Mullenix v. Luna, US___; S Ct ; L Ed 2d (2015):

In this 42 USC 1983 action, officers began to chase the plaintiff when he was contacted in his car concerning an arrest warrant. The plaintiff commenced a high-speed chase that continued for approximately 18 minutes at speeds between 85 and 110 miles per hour. Twice during the chase the plaintiff call police dispatch to say he had a gun and threatening to shoot police if they did not stop their pursuit.

Tire spikes were set beneath an overpass. Officer Mullenix decided to shoot at the car to disable it. Mullenix communicated his plan - one officer responded 10-4, a supervisor indicated stand-by and "see if the spikes work" which may or may not have been heard by Mullenix. Mullenix fired several shots at the vehicle. The car hit the spikes and flipped. It was determined that plaintiff died from the shots, not the accident. In court, Mullenix moved for summary judgment on the ground of qualified immunity - the motion was denied by the trial court and affirmed by the Court of Appeals.

The appropriate question was whether clearly established law concerning an officer's conduct where the person is avoiding capture through vehicular flight when persons in the area are at risk from the flight**.**

The Court noted that qualified immunity shields officials from civil liability as long as the official's conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known. To determine the issue, the Court looked to whether the act was unreasonable in circumstances beyond debate.

The Court held that in this situation the officer was not plainly incompetent nor did he knowingly violate the law. Therefore, the officer should be granted qualified immunity.

Justice Scalia in a concurrence, stated that the proper question was not whether it was reasonable to kill, but rather whether it was reasonable to shoot at the engine of the car even though the result was different.

Justice Sotomayor dissented.

Reversed.

Rodriguez v. United States, 575 US___; 135 S Ct 1609; 191 L Ed 2d 492 (2015):

Officer Struble, a K–9 officer, stopped petitioner Rodriguez for driving on a highway shoulder, a violation of Nebraska law. After Struble attended to everything relating to the stop, including, checking the driver's licenses of Rodriguez and his passenger and issuing a warning for the traffic offense, he asked Rodriguez for permission to walk his dog around the vehicle.

When Rodriguez refused, Struble detained him until a second officer arrived. Struble then retrieved his dog, who alerted to the presence of drugs in the vehicle. The en- suing search revealed methamphetamine. Seven or eight minutes elapsed from the time Struble issued the written warning until the dog alerted.

Rodriguez was indicted on federal drug charges. He moved to suppress the evidence seized from the vehicle on the grounds that Struble had prolonged the traffic stop without reasonable suspicion in order to conduct the dog sniff.

The United States Supreme Court held that "Absent reasonable suspicion, police extension of a traffic stop in order to conduct a dog sniff violates the Constitution's shield against unreasonable seizures."

The Court reasoned "A routine traffic stop is more like a brief stop under Terry v. Ohio, 392 U. S. 1, than an arrest. Its tolerable duration is determined by the seizure's 'mission,' which is to address the traffic violation that warranted the stop, Illinois v. Caballes, 543 U. S. 405, 407 and attend to related safety concerns."

The Court further reasoned "Authority for the seizure ends when tasks tied to the traffic infraction are—or reasonably should have been— completed. The Fourth Amendment may tolerate certain unrelated investigations that do not lengthen the roadside detention, but a traffic stop 'become[s] unlawful if it is prolonged be yond the time reasonably required to complete th[e] mission' of issuing a warning ticket."

Vacated and remanded.

Heien v. North Carolina, 574 US___; S Ct ; L Ed 2d (2014):

In this case, following a suspicious vehicle, Sergeant Matt Darisse noticed that only one of the vehicle's brake lights was working and pulled the driver over. While issuing a warning ticket for the broken brake light, Darisse became suspicious of the actions of the two occupants and their answers to his questions. The defendant, Heien, the car's owner, gave Darisse consent to search the vehicle.

Darisse found cocaine, and Heien was arrested and charged with attempted trafficking. The trial court denied Heien's motion to suppress the seized evidence on Fourth Amendment grounds, concluding that the vehicle's faulty brake light gave Darisse reasonable suspicion to initiate the stop. The North Carolina Court of Appeals reversed,

holding that the relevant code provision, which requires that a car be "equipped with a stop lamp," N. C. Gen. Stat. Ann. §20–129(g), requires only a single lamp—which Heien's vehicle had—and therefore the justification for the stop was objectively unreasonable.

The State Supreme Court reversed and held that, even assuming no violation of the state law had occurred, Darisse's mistaken understanding of the law was reasonable, and thus the stop was valid.

The United States Supreme Court affirmed**.**

The Court ruled that "Because Darisse's mistake of law was reasonable, there was reason able suspicion justifying the stop under the Fourth Amendment. Pp. 4–13. The Court noted that a "A police officer's objectively reasonable "mistake of law can . . . give rise to the reasonable suspicion necessary to uphold [a] seizure under the Fourth Amendment." (holding that because "[i]t was . . . objectively reasonable for an officer . . . to think that [the petitioner's] faulty right brake light was a violation of [state] law[,] . . . there was reasonable suspicion justifying [a traffic] stop[]").

Plumkoff v. Rickard, ___US___; 134 S Ct 2012; 188 L Ed 2d 1056 (2014):

The Court held that the use of deadly force by police officers in this case – firing multiple rounds into a car during a high-speed chase, contributing to the death of the driver and a passenger – was not unreasonable given the threat to public safety posed by the driver's reckless behavior.

As such, the officers did not violate the Fourth Amendment. But in any event, the officers were entitled to qualified immunity because they did not violate any clearly established law.

Riley v. California, 573 US ___; 134 S Ct 2473; 189 L Ed 2d 430 (2014):

The Court held that a police officer may not search digital information on a cell phone pursuant to an arrest, without a warrant.

The Court's decision was in two combined cases, *Riley v California* and *United States v Wurie.* In each case the defendant was arrested, and the defendant's cell phone was searched incident to that arrest, yielding evidence used against the defendant. In neither case was there a warrant. The Court, recognizing that warrantless searches of objects in an arrestee's possession have been justified as incident to arrest, refused to extend that justification to cell phone searches. The Court particularly stressed that cell phones are different from, say, notebooks, that they contain far more information of a personal nature, and that the traditional justifications for searches incident to arrest – to see if the person has any weapons, and to prevent the destruction of evidence – don't apply. Whether or not the contents of the cell phone are password protected is irrelevant.

One argument the prosecution made in these cases was that if the phone isn't searched immediately, its contents can be erased by a distant signal, hence destroying possible evidence. The Court suggested that police officer could remove the batteries from a phone, or put the phones in a "Faraday bag" (a lightweight aluminum bag that makes it more difficult for a distant signal to reach the phone).

The Court also said that the search of a cell phone by warrant would be permissible – but of course that would require probable cause to believe evidence would be found on the cell phone, something that could be established in many cases but certainly not all.

Navarette v. California, 572 US___; 134 S Ct 896; L Ed 2d (2014):

A California Highway Patrol officer stopped the pickup truck occupied by petitioners because it matched the description of a vehicle that a 911 caller had recently reported as having run her off the road. As he and a second officer approached the truck, they smelled marijuana. They searched the truck's bed, found 30 pounds of marijuana, and arrested petitioners.

Petitioners moved to suppress the evidence, arguing that the traffic stop violated the Fourth Amendment. Their motion was denied, and they pleaded guilty to transporting marijuana. The California Court of Appeal affirmed, concluding that the officer had reasonable suspicion to conduct an investigative stop.

The Supreme Court held that the traffic stop complied with the Fourth Amendment because, under the totality of the circumstances, the officer had reasonable suspicion that the truck's driver was intoxicated.

The Court noted that the Fourth Amendment permits brief investigative stops when an officer has "a particularized and objective basis for suspecting the particular person stopped of . . . criminal activity." *United States* v. *Cortez*, 449 U. S. 411, 417-418. Reasonable suspicion takes into account "the totality of the circumstances," *id., at 417*, and depends "upon both the content of information possessed by police and its degree of reliability," *Alabama v. White*, 496 U. S. 325, 330. An anonymous tip alone seldom demonstrates sufficient reliability, *White*, 496 U. S, at 329, but may do so under appropriate circumstances, *id., at 327*.

The Court further noted that the 911 call in this case bore adequate indicia of reliability for the officer to credit the caller's account. By reporting that she had been run off the road by a specific vehicle, the caller necessarily claimed an eyewitness basis of knowledge.

The apparently short time between the reported incident and the 911 call suggests that the caller had little time to fabricate the report. And a reasonable officer could conclude that a false tipster would think twice before using the 911 system, which has several technological and regulatory features that safeguard against making false reports with

immunity. Not only was the tip here reliable, but it also created reasonable suspicion of drunk driving.

Running another car off the road suggests the sort of impairment that characterizes drunk driving. While that conduct might be explained by another cause such as driver distraction, reasonable suspicion "need not rule out the possibility of innocent conduct." *United States* v. *Arvizu*, 534 U. S. 266, 277.

Finally, the officer's failure to observe additional suspicious conduct during the short period that he followed the truck did not dispel the reasonable suspicion of drunk driving, and the officer was not required to surveil the truck for a longer period.
Affirmed.

Missouri v. McNeely, 569 US___; 133 S Ct 1552; 185 L Ed 2d 696 (2013):

The United States Supreme Court held that "When officers in drunk-driving investigation can reasonably obtain a warrant before having a blood sample drawn without significantly undermining the efficacy of the search, the Fourth Amendment mandates that they do so. See *McDonald* v. *United States*, 335 U. S. 451, 456.

Circumstances may make obtaining a warrant impractical such that the alcohol's dissipation will support an exigency, but that is a reason to decide each case on its facts, as in *Schmerber v. California,* 384 U.S. 757 (1966), not to accept the "considerable overgeneralization" that a *per se* rule would reflect, *Richards* v. *Wisconsin*, 520 U. S. 385, 393.'

The majority stated that:

"Because the State sought a *per se* rule here, it did not argue that there were exigent circumstances in this particular case. The arguments and the record thus do not provide the Court with an adequate framework for a detailed discussion of all the relevant factors that can be taken into account in determining the reasonable of acting without a warrant. It suffices to say that the metabolization of alcohol in the bloodstream and the ensuing loss of evidence are among the factors that must be considered in deciding whether a warrant is required."

Chief Justice John G. Roberts Jr., joined by Justices Stephen G. Breyer and Samuel A. Alito Jr., concurred in part and dissented in part:

"A police officer reading this court's opinion would have no idea — no idea — what the Fourth Amendment requires of him."

Justice Clarence Thomas dissented: "Because the body's natural metabolization of alcohol inevitably destroys evidence of the crime, it constitutes an exigent circumstance."

United States v. Jones, 565_US___; 132 S Ct 954; 181 L Ed 2d 911 (2013):

The Government obtained a search warrant permitting it to install a Global-Positioning-System (GPS) tracking device on a vehicle registered to the defendant Jones' wife. Agents installed the device on the vehicle after the warrant was no longer valid. The Government tracked the vehicle's movements for 28 days. Subsequently, Jones was indicted on drug trafficking conspiracy charges and convicted at trial.

The United States Supreme Court held the Government's attachment of the GPS device to the vehicle and its use of the device to monitor the vehicle's movements constitutes a search under the Fourth Amendment.

Officers are reminded that the general rule is that police officers must have a search warrant to conduct a search unless the search falls under one of the exceptions to the search warrant rule.

The Court declined to address whether the search would have been reasonable under an exception to the search warrant rule, therefore, officers are encouraged to obtain a search warrant prior to installing a GPS tracking device on a vehicle.

Florida v Jardines, 569 US 1_; 132 S Ct 1409; 185 L Ed 2d 465 (2013):

The United States Supreme Court found that an officer's taking a drug dog onto a defendant's porch with the purpose of obtaining information constituted a search.

"The [Fourth] Amendment establishes a simple baseline, one that for much of our history formed the exclusive basis for its protections: When 'the Government obtains information by physically intruding' on persons, houses, papers, or effects, 'a 'search' within the original meaning of the Fourth Amendment has "undoubtedly occurred."

Williams v Illinois, 567 US___; 132 S Ct 2221; 183 L Ed 2d 89 (2012):

In a bench trial, petitioner was convicted of rape after an expert testified that a DNA profile produced by an outside lab matched a profile produced by the state police lab using a sample of petitioner's blood. The Illinois Appellate Court and the Illinois Supreme Court affirmed. Certiorari was granted as to whether the testimony was admitted for the truth of the matter asserted, and whether the Confrontation Clause barred the testimony.

The expert did not identify the sample used for the lab's profile or establish how it handled or tested the sample. Nor did she vouch for the accuracy of that profile. **The out-of-court statements related by the expert solely for the purpose of explaining the assumptions on which her opinion rested were not offered for their truth and thus fell outside the scope of the Confrontation Clause.** The expert did not vouch for the quality of the lab work. She was asked if there was a computer match generated of the

male DNA profile found in semen from the swabs of the victim to a male DNA profile that had been identified as having originated from petitioner. She answered yes.

That the matching profile was found in semen from the victim's swabs was a mere premise of the question, and the expert simply assumed that premise to be true. The fact that the lab's profile matched petitioner (identified by the victim as her attacker) was itself confirmation that the sample tested was the victim's sample. The expert referred to the report not to prove the truth of the matter asserted in it, but only to establish that it contained a profile that matched the profile deduced from petitioner's blood.

The United States Supreme Court found in a fractured opinion that the Confrontation Clause was not violated.

Bullcoming v. New Mexico, 564_US___; 131 S Ct 2705; 180 L Ed 2d 610 (2011):

In an opinion authored by Justice Ginsburg, the Court held that the prosecution in a criminal case may not introduce a forensic lab report containing a testimonial certification through the in-court testimony of another scientist who did not sign the certification, or perform or observe the test which is the subject of the certification. The defendant has a right to be confronted with the analyst who made the certification, unless he or she is unavailable at trial, and the defendant has had an opportunity to cross-examine him or her prior to trial.

If an out-of-court statement is testimonial, it may not be used against a defendant at trial unless the witness who made the statement is unavailable and the defendant has had a prior opportunity to confront the witness. Here, the State never asserted that the analyst was unavailable, nor did the defendant have a prior opportunity to cross-examine him.

In a concurrence, Justice Sotomayor emphasized the limited holding of the case, noting that the substitute analyst had no involvement whatsoever with the testing, was not an expert witness asked to give an independent opinion about testimonial reports not admitted into evidence, there was no suggested alternative purpose for the report, such as medical treatment, and the State sought to admit the first analyst's statements, not just a printout. Thus, "the court's opinion does not address any of these factual scenarios."

Justice Kennedy authored a dissent, joined by Justice Breyer, Justice Alito and the Chief Justice. According to Justice Kennedy, "requiring the State to call the technician who filled out a form and recorded the results of a test is a hollow formality."

Berghuis v. Thompkins, 560 US 370; 130 S Ct 2250; 176 L Ed 2d 1098 (2010):

After advising respondent Thompkins of his rights in full compliance with *Miranda v. Arizona*, 384 U. S. 436, Detective Helgert and another Michigan officer interrogated him about a shooting in which one victim died. At no point did Thompkins say that he wanted to remain silent, that he did not want to talk with the police, or that he wanted an

attorney. He was largely silent during the 3-hour interrogation, but near the end, he answered "yes" when asked if he prayed to God to forgive him for the shooting. He moved to suppress his statements, claiming that he had invoked his Fifth Amendment right to remain silent, that he had not waived that right, and that his inculpatory statements were involuntary.

The jury found Thompkins guilty of first degree murder, and he was sentenced to life without parole. The trial court denied his motion for new trial. On appeal, the Michigan Court of Appeals rejected both Thompkins' Miranda and his ineffective-assistance claims.

The Federal District denied his subsequent habeas request, reasoning that Thompkins did not invoke his right to remain silent and was not coerced into making statements during the interrogation, and that it was not unreasonable for the State Court of Appeals to determine that he had waived his right to remain silent. The Sixth Circuit reversed, holding that the state court was unreasonable in finding an implied waiver of Thompkins' right to remain silent and in rejecting his ineffective-assistance-of counsel claim.

The United States Supreme Court ruled that Thompkins' silence during the interrogation did not invoke his right to remain silent. The Court stated that "If the accused makes an "ambiguous or equivocal" statement or no statement, the police are not required to end the interrogation, or ask questions to clarify the accused's intent."

The Court noted that there is no principled reason to adopt different standards for determining when an accused has invoked the Miranda right to remain silent and the Miranda right to counsel.

The court further noted that Thompkins waived his right to remain silent when he knowingly and voluntarily made a statement to police. The record here showed that Thompkins waived his right to remain silent. First, the lack of any contention that he did not understand his rights indicates that he knew what he gave up when he spoke. Second, his answer to the question about God is a "course of conduct indicating waiver" of that right.

The court stated that had he wanted to remain silent, he could have said nothing in response or unambiguously invoked his Miranda rights, ending the interrogation. The fact that he made a statement nearly three hours after receiving a Miranda warning does not overcome the fact that he engaged in a course of conduct indicating waiver. Third, there is no evidence that his statement was coerced. He did not claim that police threatened or injured him or that he was fearful. The interrogation took place in a standard-sized room in the middle of the day, and there is no authority for the proposition that a 3-hour interrogation is inherently coercive.

The judgment of the Court of Appeals was reversed, and the case was remanded with instructions to deny the Defendant's petition.

Padilla v. Kentucky, 559 US 356; 130 S Ct 1473; 176 L Ed 2d 284 (2010):

Petitioner Padilla, a lawful permanent resident of the United States for over 40 years, faces deportation after pleading guilty to drug distribution charges in Kentucky. In post-conviction proceedings, he claimed that his counsel not only failed to advise him of this consequence before he entered the plea, but also told him not to worry about deportation since he had lived in this country so long. He alleges that he would have gone to trial had he not received this incorrect advice.

The Court held that because counsel must inform a client whether his plea carries a risk of deportation, the Defendant has sufficiently alleged that his counsel was constitutionally deficient. Whether he is entitled to relief depends on whether he has been prejudiced, a matter not addressed here.

This decision makes substantial changes to immigration law and dramatically raised the stakes of a non-citizen's criminal conviction. While once there was only a narrow class of deportable offenses and judges wielded broad discretionary authority to prevent deportation, immigration reforms have expanded the class of deportable offenses and limited judges' authority to alleviate deportation's harsh consequences. Because the drastic measure of deportation or removal is now virtually inevitable for a vast number of non-citizens convicted of crimes, the importance of accurate legal advice for non-citizens accused of crimes has never been more important. Thus, as a matter of federal law, deportation is an integral part of the penalty that may be imposed on non-citizen Defendants who plead guilty to specified crimes.

Melendez-Diaz v. Massachusetts, 557 US 305; 129 S Ct 2527; 174 L Ed 2d 314 (2009):

The issue is whether a state forensic analyst's laboratory report prepared for use in a criminal prosecution is "testimonial" evidence subject to the demands of the Sixth Amendment's Confrontation Clause as set forth in *Crawford v. Washington*, 541 U.S. 36 (2004)?

The Supreme Court held that a state forensic analyst's laboratory report that is prepared for use in a criminal prosecution is subject to the demands of the Sixth Amendment's Confrontation Clause.

With Justice Antonin G. Scalia writing for the majority and joined by Justices John Paul Stevens, David H. Souter, Clarence Thomas, and Ruth Bader Ginsburg, the Court reasoned that the laboratory reports constitute affidavits which fall within the "core class of testimonial statements" covered by the Confrontation Clause. Therefore, when Mr. Melendez-Diaz was not allowed to confront the persons who created the laboratory reports used in testimony at his trial, his Sixth Amendment right was violated.

Justice Thomas wrote a separate concurring opinion, emphasizing that he thought the Confrontation Clause was only implicated by statements made outside the courtroom

when they are part of "formalized testimonial materials," like the sworn affidavits used in the Massachusetts lab reports.

Justice Anthony M. Kennedy dissented and was joined by Chief Justice John G. Roberts, and Justices Stephen G. Breyer and Samuel A. Alito. He criticized the majority for dispensing with the long held rule that scientific analysis could be introduced into evidence without testimony from the analyst who produced it.

Arizona v. Gant, 556 US 332; 129 S Ct 1710; 173 L Ed 2d 485 (2009):

The United States Supreme Court held that the police may search the passenger compartment of a vehicle incident to a recent occupant's arrest only if it is reasonable to believe that the arrestee might access the vehicle at the time of the search or that the vehicle contains evidence of the offense of arrest.

The Court ruled that warrantless searches "are per se unreasonable," "subject only to a few specifically established and well-delineated exceptions." The exception for a search incident to a lawful arrest applies only to "the area from within which [an arrestee] might gain possession of a weapon or destructible evidence. The Supreme Court applied that exception to the automobile context in *Belton,* the holding of which rested in large part on the assumption that articles inside a vehicle's passenger compartment are "generally . . . within 'the area into which an arrestee might reach.' "

The Court rejected a broad reading of *Belton* that would permit a vehicle search incident to a recent occupant's arrest even if there were no possibility the arrestee could gain access to the vehicle at the time of the search. The safety and evidentiary justifications underlying *Chimel's* exception authorize a vehicle search only when there is a reasonable possibility of such access. Although it does not follow from *Chimel,* circumstances unique to the automobile context also justify a search incident to a lawful arrest when it is "reasonable to believe evidence relevant to the crime of arrest might be found in the vehicle."

The Court was not persuaded by the State's argument that its expansive reading of *Belton* correctly balances law enforcement interests with an arrestee's limited privacy interest in his vehicle. A narrow reading of *Belton* and *Thornton*, together with this Court's other Fourth Amendment decisions; permit an officer to search a vehicle when safety or evidentiary concerns demand.

Arizona v. Johnson, 555 US 323; 129 S Ct 781; 172 L Ed 2d 694 (2009):

The Defendant was a passenger in the back seat of a vehicle stopped for a license plate check. The police officer found that the insurance on the vehicle had been suspended.

After the traffic stop, the police officer initiated a conversation with the Defendant that was unrelated to the reason for the traffic stop. Thereafter, the officer asked the

Defendant to exit the vehicle. The officer conducted a pat-down search of the Defendant because she was concerned for her safety upon noticing signs that he may have been affiliated with a gang.

During the pat-down search, the officer found a gun near his waist; he was arrested, and a further search found marihuana. The Defendant was charged with possessing a gun without legal authorization, possession of marihuana, and resisting arrest.

The Arizona Court of Appeals ruled that the pat-down search was improper because the encounter with the Defendant had become consensual by the time the search was conducted. The Arizona Supreme Court denied review.

The United States Supreme Court reversed the Arizona Court of Appeals decision. The Court held that "a reasonable passenger would understand that during the time a car is lawfully stopped, he or she is not free to terminate the encounter with police and move about at will." The Court further held that "nothing occurred in this case that would have conveyed to the Defendant that, prior to the frisk, the traffic stop had ended or that he was otherwise free to depart without police permission."

Therefore, the Court concluded that the officer was not required by the Fourth Amendment to give the Defendant an opportunity to depart without first ensuring that, in so doing, she was not permitting a dangerous person to get behind her.

Herring v. United States, 555 US 135; 129 S Ct 695; 172 L Ed 496 (2009):

During a traffic stop, officers arrested Herring based on information from a neighboring county that they had an arrest warrant for him. Officers subsequently searched him and located drugs and a gun. After the search, it was revealed that the warrant had been recalled a month earlier, thought this information had never been entered into the database. Herring was indicted on federal gun and drug possession charges and moved to suppress the evidence on the ground that his initial arrest had been illegal.

The Court held that when police mistakes leading to an unlawful search are the result of isolated negligence attenuated from the search, rather than systemic error or reckless disregard of constitutional requirements, the exclusionary rule does not apply. To trigger the exclusionary rule, police conduct must be sufficiently deliberate that exclusion can meaningfully deter it, and sufficiently culpable that such deterrence is worth the price paid by the justice system.

The pertinent analysis is objective, not an inquiry into the arresting officers' subjective awareness. The conduct here was not so objectively culpable as to require exclusion. The marginal benefits that might follow from suppressing evidence obtained in these circumstances cannot justify the substantial costs of exclusion.

6th CIRCUIT COURT OF APPEALS DECISIONS

United States v Noble, Fed Appx (CA 6, 2014):

Members of a Drug Enforcement Administration (DEA) task force following a vehicle asked a local police officer to stop the vehicle for a traffic violation. The local officer was told only that the vehicle was suspected of being linked to a DEA drug investigation.

Upon making contact with the driver, the officer noticed that a passenger in the vehicle, defendant Noble, was very nervous. The driver gave the officer consent to search the vehicle and the officer removed the defendant from the vehicle and frisked him for weapons. On the defendant's person, the officer found several baggies of methamphetamine, a pipe used for smoking drugs, and a handgun. The defendant filed a motion to suppress the evidence arguing the officer lacked reasonable suspicion that the defendant was armed and dangerous in order to frisk him. The trial court denied the motion.

The United States Court of Appeals for the Sixth Circuit noted that most traffic stops represent a minor inconvenience to the vehicle's occupants, but they are especially fraught with danger to police officers. As a result, police officers may order drivers and passengers out of the vehicle during the traffic stop without violating the Fourth Amendment. However, to frisk a suspect, an officer must have reasonable suspicion to believe the suspect is armed and dangerous.

The officer testified he believed the frisk was necessary for officer safety because of the defendant's nervousness, the fact that the vehicle was suspected in a DEA investigation, and the officer's training which told him that drug traffickers are often armed. The court examined the totality of the circumstances and held the officer did not have reasonable suspicion to believe the defendant was armed and dangerous.

The court noted that many citizens are nervous during traffic stops, even if they have nothing to fear or hide. As a result, even extreme nervousness is an unreliable indicator of dangerousness. The court pointed out there was no evidence the defendant failed to comply with any commands or became noticeably more nervous as the stop progressed. Also, the fact the officer evaluated the vehicle's window tint and performed field sobriety tests on the driver after observing the defendant's nervousness, but before frisking the defendant, substantially discounted the relevance of the defendant's nervousness in the court's reasonable suspicion analysis.

Likewise, a person's mere presence in a car believed to be connected to drug trafficking is not an automatic "green light" for frisking that person. The Supreme Court has held that an officer must have specific, articulable reasons to believe a particular person is armed and dangerous before the officer may frisk that person.

Lastly, the court held that a police officer can rely on his or her training and experience that drug dealers frequently carry weapons, but pointed out the court has always required some corroboration that particular individuals are involved in dealing drugs before allowing a frisk for weapons. The court noted that there were no specific facts linking the defendant to the drug-trafficking operation beyond being in a vehicle. The officer did not recognize the driver of the vehicle, nor did he have any idea of who the defendant was prior to the frisk. Accordingly, the court reversed the trial court.

Reversed and remanded for further proceedings consistent with this opinion.

United States v Rodriguez, 485 Fed Appx 16 (CA 6, 2012):

Defendant's motion to suppress argued that his vehicle was stopped without probable cause and that even if the initial stop was valid, he was illegally detained, in violation of the Fourth Amendment, after the purpose of the stop was completed. However, the district court concluded that defendant was not detained because a reasonable person would have believed that he was free to go after being told by the officer that he was "good to go."

The court examined the factors which the officer identified that led him to suspect criminal activity by defendant. The question was not whether there was a possible innocent explanation for each of the factors, but whether all of them taken together gave rise to reasonable suspicion that criminal activity could be afoot.

Viewing the factors together, and recognizing that the officer was entitled to assess the circumstances in light of his experience as a police officer and his knowledge of drug courier activity, the court concluded that the brief detention was a reasonable response to the totality of the circumstances.

United States v. Davis, 326 Fed Appx 351 (CA 6, 2009):

Defendant's conviction of felon in possession of a firearm and possession of cocaine with intent to distribute arose from evidence during a traffic stop. He argued the evidence should have been suppressed because the officer did not have probable cause to pull him over on suspicion of driving with obstructed vision.

In a revised Opinion in the court held that in view of the broad scope of Mich. Comp. Law 257.709(1)(c), we cannot accept that police lacked probable cause to stop him based upon the Tweety Bird.

The court further held the law's language is unqualified in that an obstruction of any size for any amount of time falls within it. Consequently, the mere sight of the dangling Tweety Bird supplied the quantum of individualized suspicion sufficient to establish probable cause to believe that Davis was violating Section 257.709(1)(c). Thus, the stop

was reasonable under the Fourth Amendment, and the district court correctly denied Davis's motion to suppress.

Additionally, footnote 2 of the opinion states: "We thank the State of Michigan for submitting its views on whether this law is void for vagueness. Because Davis did not raise the question, we decline to reach it here."

Therefore, the court did not address the issue regarding the constitutionality of Michigan's dangling ornament statute because the Defendant did not raise it.

United States v. Ellison, 462 F3d 557 (CA 6, 2006):

The 6th Circuit held that there is no reasonable expectation of privacy in a license plate, and that it does not implicate the 4th Amendment to run that plate through LEIN. Accordingly, the arrest of the car owner on an outstanding warrant revealed by LEIN, and the subsequent search incident to arrest discovering two firearms, was constitutional.

LOWER FEDERAL COURT DECISION

Platte v. Thomas Township, 504 F Supp 2d 227 (ED Mich, 2007):

The above named case was decided by U.S. District Court Judge David Lawson out of the Eastern District of Michigan. **The Court ruled that the state statute police officers previously relied upon to compel PBT tests on minors suspected of having unlawfully consumed alcohol (MCL 436.1703(6)) was unconstitutional on its face.** Further, the opinion specifically stated the Governor of the State of Michigan, the MSP, Thomas Township, "their servants, agent and employees, and those in active concert and participation with them, are RESTRAINED AND ENJOINED from enforcing or imposing sanctions under MCL 436.1703(6)…"

MICHIGAN SUPREME COURT DECISIONS

People v. Miller, Mich Sup Ct (2015):

While returning from a concert at which they had both been drinking alcohol, defendant and his girlfriend got into an argument. Defendant grabbed the wheel from his girlfriend, who was driving, causing the car to go off the road and strike a tree in Leelanau County. Defendant's girlfriend suffered a broken collar bone and a concussion as a result of the crash. Defendant had a blood alcohol level of 0.17.

Defendant was charged with operating while intoxicated (OWI) and operating while intoxicated causing serious impairment of the body unction of another person (OWI-injury). A jury convicted defendant as charged.

Defendant appealed to the Court of Appeals, arguing that the trial court violated the multiple punishments of the double jeopardy clauses by convicting him of both OWI and OWI-injury. The Court of Appeals agreed, vacated defendant's OWI conviction. The Prosecutor moved for reconsideration, arguing that the Court of Appeals' analysis was contrary to *People v Ream*, 481 Mich 223 (2008). The Court of Appeals denied the motion.

The Prosecutor sought leave to appeal in the Michigan Supreme Court. The Court granted leave.

The issue before the Court was whether the defendant's convictions of OWI and OWI-injury arising from a single intoxicated driving incident violated the double jeopardy clauses of the United States and Michigan Constitutions.

The Michigan Supreme Court held that defendant's convictions of both OWI and OWI-injury for the same intoxicated driving incident violated the multiple punishments prong of the double jeopardy clauses.

The Court reasoned "Based on the plain language of MCL 257.625, the Legislature expressed a clear intent not to allow conviction of and punishment for multiple offenses arising from the same conduct, except where explicitly authorized by the statute."

The Court noted "The specific authorization for multiple punishments contained in MCL 257.625(7)(d) leads us to conclude that the Legislature did *not* intend to permit multiple punishments for OWI and OWI-injury offenses arising from the same incident. While subsection (7) expressly authorizes multiple punishments for certain operating while intoxicated offenses, this authorization is limited to the circumstances described in MCL 257.625(7)(d). And interpreting this subsection in the context of the statute as a whole leads us to conclude that the Legislature intended to exclude all other multiple

punishments under MCL 257.625."

The Court however noted for example "Under MCL 257.625(7)(d), the Legislature specifically authorized multiple convictions and punishments for a person who commits OWI-minor and by that same conduct also commits OWI-injury or causes “the death of another person” under MCL 257.625(4) (OWI-death)."

Affirmed on alternate grounds and remanded to the trial court for re-sentencing.

People v. Thabo Jones, Mich Sup Ct (2014):

The defendant was charged with the greater offense of reckless driving causing death. Prior to trial, defense counsel filed a motion in limine, requesting that the circuit court instruct the jury on the misdemeanor lesser offense of committing a moving violation causing death. Despite the explicit prohibition in MCL 257.626(5) against such an instruction, the Wayne County Circuit Court granted the motion, concluding that moving violation causing death is a necessarily included lesser offense of reckless driving causing death and, therefore, MCL 257.626(5) violates the doctrine of separation of powers under Const 1963, art 3, § 2. The Court of Appeals affirmed.

The Michigan Supreme held that the Circuit Court erred by granting defendant's request that the jury be instructed on moving violation causing death.

The court reasoned that because the Legislature "specifically created an exception prohibiting an instruction on moving violation causing death where the charged offense is reckless driving causing death, and because the Legislature did not exceed its constitutional authority in doing so, it was error for the trial court to grant the defendant's request to instruct the jury on moving violation causing death.”

Therefore, the Supreme Court reversed the judgment of the Court of Appeals and remanded the case to the trial court for further proceedings, including entry of an order vacating its ruling granting defendant's request to instruct the jury on the misdemeanor lesser offense of moving violation causing death.

People v. Koon, 494 Mich 1; 832 NW2d 724 (2013):

The issue before was whether the MMMA’s protection supersedes the Michigan Vehicle Code’s prohibition and allows a registered patient to drive when he or she has indications of marihuana in his or her system but is not otherwise under the influence of marihuana?

The Michigan Supreme Court held that the “The immunity from prosecution provided under the MMMA to a registered patient who drives with indications of marihuana in his or her system but is not otherwise under the influence of marihuana inescapably conflicts with MCL 257.625(8), which prohibits a person from driving with any amount of marihuana in her or system. Under the MMMA, all other acts and parts of acts inconsistent with the MMMA do not apply to the

medical use of marihuana. Consequently, MCL 257.625(8) does not apply to the medical use of marihuana."

Therefore the Michigan Court held that the "Court of Appeals incorrectly concluded that defendant could be convicted under MCL 257.625(8) without proof that he had acted in violation of the MMMA by operating a motor vehicle while under the influence of marihuana."

The Michigan Supreme Court reversed the Michigan Court of Appeals and reinstated the judgment of the Grand Traverse Circuit Court, and remanded the case to the district court for further proceedings.

People v. Nunley, 491 Mich 686; 821 NW2d 642 (2012) cert den ___US___; 133 S Ct 667; 184 L Ed 2d 463 (2012):

The issue before the Court was whether a Michigan Department of State (DOS) certificate of mailing is testimonial in nature and thus that its admission, without accompanying witness testimony, violated the Confrontation Clause of the state and federal constitutions. The DOS generated the certificate of mailing to certify that it had mailed a notice of driver suspension to a group of suspended drivers. The prosecution sought to introduce this certificate to prove the notice element of the charged crime, driving while license revoked or suspended (DWLS), second offense, MCL 257.904(1) and (3)(b).

The Court held that a DOS certificate of mailing is not testimonial because the circumstances under which it is generated would not lead an objective witness reasonably to believe that the statement would be available for use at a later trial.

Instead, the circumstances reflect that the creation of a certificate of mailing, which is necessarily generated before the commission of any crime, is a function of the legislatively authorized administrative role of the DOS independent from any investigatory or prosecutorial purpose.

Therefore, the Court concluded that the DOS certificate of mailing may be admitted into evidence absent accompanying witness testimony without violating the Confrontation Clause. The Court reversed the judgment of the Court of Appeals and remanded the case to the district court for further proceedings consistent with their opinion.

People v. Feezel, 486 Mich 184; 783 NW2d 67 (2010):

The victim was walking in the paved portion of a 5 lane road. His BAC was .268. It was dark and raining. The Defendant hit the victim and left the scene. The trial judge precluded admission of any evidence regarding the victim's intoxication. The Defendant was convicted of operating with the presence of a schedule 1 controlled substance causing death, leaving the scene of an accident resulting in death, and OWI, 2nd offense.

The Defendant appealed, claiming that evidence of the victim's intoxication should have been admitted on the issuance of causation, and that the presence of 11-carboxy-THC in his blood did not constitute a schedule 1 controlled substance.

In *People v Derror*, 475 Mich 316 (2006) the Michigan Supreme Court ruled in a 4-3 decision that 11-carboxy-THC, a metabolite of marihuana, is included in the statutory definition as a derivative of marihuana. Accordingly, the *Derror* majority upheld the Defendant's conviction for operating with a schedule 1 controlled substance in her system based upon the presence of 11-carboxy-THC in her blood. Justice Hathaway joined the three *Derror* dissenters in this case to overrule *Derror*.

The majority held that 11-carboxy-THC is not a derivative of marihuana, and therefore is not a schedule 1 controlled substance. Accordingly, they reversed this Defendant's conviction for operating with the presence of a schedule 1 controlled substance causing death. Justices Young, Markman and Corrigan dissented from this holding.

On the other issue, a unanimous court held that evidence of the victim's extreme intoxication in this case should have been admitted to support the Defendant's claim that the victim's intoxication constituted a superseding cause of his death. They emphasized that intoxication evidence may not be relevant or admissible in all cases.

They emphasize, however, "That evidence of a victim's intoxication may not be relevant or admissible in all cases. Indeed, the primary focus in a criminal trial remains on the Defendant's conduct. Accordingly, any level of intoxication on the part of a victim is not automatically relevant, and the mere consumption of alcohol by a victim does not automatically amount to a superseding cause or de facto gross negligence."

Instead, under MRE 401, a trial court must determine whether the evidence tends to make the existence of gross negligence more probably or less probable than it would be without the evidence and, if relevant, whether the evidence is inadmissible under the balancing test of MRE 403.

People v. Anstey, 476 Mich 436; 779 NW2d 579 (2006):

The Defendant was arrested for drunk driving and took a breath test. The results were .21. He asked to be taken to Indiana for an independent test. That request was denied. He then asked to go to a hospital that was 15-20 minutes away from the jail. That was also denied. The police offered to take him to the local hospital, but he refused that offer. The lower courts held that the police unreasonably denied the Defendant his right to an independent test. Pursuant to *People* v *Koval,* 371 Mich 453 (1963), the charges were dismissed. The Michigan Supreme Court reversed.

Four Justices noted that the statute authorizing the independent test did not contain any sanction for the failure to provide an independent test. They held that the *Koval* court erred in holding that dismissal is the remedy for a violation.

They further held that suppression of the state's chemical test is also not a remedy. Rather, the court may instruct the jury regarding the officer's failure to provide the Defendant the opportunity to obtain an independent case. A model instruction is in the opinion.

Justice Weaver concurred in overruling *Koval,* but dissented from the jury instruction remedy. Justices Cavanagh and Kelly dissented.

People v. Yamat, 475 Mich 49; 714 NW2d 335 (2006):

The district court abused its discretion by refusing to bind Defendant over for trial at the preliminary examination because the district court applied an erroneous definition of the term "operate." Defendant was a passenger in the vehicle his girlfriend was driving. As she drove, the couple argued. During the argument, Defendant grabbed the steering wheel and turned it. When the Defendant wrenched the steering wheel, the vehicle veered off the road, struck a jogger and caused the jogger severe injuries. The prosecutor charged Defendant with one count of felonious driving.

However, the district court refused to bind Defendant over for trial after the preliminary examination. **The definition of "operate" contained in the Michigan Vehicle Code requires the exercise of "actual physical control" over a motor vehicle, not exclusive control of a vehicle. Unlike the Court of Appeals, the court could not conclude the statute effectively requires exclusive control "of all the functions necessary to make the vehicle operate," because such a construction does not comport with the plain language of the statutory definition.**

As applied to the facts, Defendant's act of grabbing the steering wheel and thereby causing the car to veer off the road clearly constituted "actual physical control of a motor vehicle." Utilizing the proper statutory definition of "operate," the prosecutor clearly established sufficient probable cause Defendant violated MCL 257.626c. The judgment of the Court of Appeals was reversed and the case was remanded for trial.

MICHIGAN COURT OF APPEALS DECISIONS

PUBLISHED CASES

People v. Bergman, ___Mich App___;___NW2d___ (2015):

On appeal the defendant argued that the trial court erred in excluding evidence that the victim driver had alcohol and controlled substances in his system. The defense's basis for admission of this evidence was that it would establish that the victim himself was negligent and that defendant did not have the requisite level of intent for a second-degree murder charge.

The Court of Appeals rejected both arguments. First, the Court held that there was no evidence that the victim did anything to contribute to the crash such that he was negligent or grossly negligent and thus an intervening cause of the crash. Evidence at trial established that the victim's truck was properly driving in its own lane when defendant's truck crossed the center line and struck victim's truck head on. The Court contrasted these facts from those in *People v. Feezel*, 486 Mich 184 (2010), where the heavily intoxicated victim was walking in the middle of an unlit road with his back to oncoming traffic on a dark rainy night.

Second, the Court of Appeals also held that evidence that the victim had alcohol and controlled substances in his system is irrelevant to the issue of defendant's intent in a second-degree murder case. The Court held that the facts in this case were sufficient to show that defendant committed an act that was in obvious disregard of life-endangering consequences and that victim's state of intoxication was irrelevant to her knowledge of her own susceptibility of hazardous driving.

The defendant also argued on appeal that the trial court erred in admitting evidence of seven prior incidents where she had driven erratically, was passed out in her vehicle, or struck another vehicle while impaired or under the influence of prescription drugs. These incidents were admitted as prior acts under MRE 404(b)(1).

The Court held "The prior acts evidence here involved incidents in which defendant either drove unsafely, was passed out in her vehicle, or was involved in an accident while impaired or under the influence of prescription substances, or was in possession of pills, such as Vicodin and Soma.

This evidence was properly admitted to show defendant's knowledge and absence of mistake, and was relevant to the malice element for second-degree murder because it was probative of defendant's knowledge of her inability to drive safely after consuming prescription substances. And, because the prior incidents were minor in comparison to charged offense involving a head-on collision that caused the deaths of two individuals, the probative value of the evidence was not substantially outweighed by the danger of unfair prejudice under MRE 403.

Lastly, the trial court gave an appropriate cautionary instruction to reduce any potential for prejudice."

Therefore, the Court rejected this argument and held that the prior acts were properly admitted to show defendant's knowledge and absence of mistake.

The Court also held that the prior acts were relevant to the malice element for second-degree murder because it was probative of defendant' knowledge of her inability to drive safely after consuming prescription drugs.

People v. Pace, ___Mich App___;___NW2d___ (2015):

On June 5, 2013, as the victim walked across a street along a pedestrian crosswalk, defendant made a left- hand turn and struck the victim with his vehicle in the process. As a result of the collision, the victim suffered head trauma that left him permanently disabled. Defendant was charged with moving violation causing serious impairment of a body function pursuant to MCL 257.601d(2).

Prior to trial, defendant moved the district court for a jury instruction requiring the prosecution to prove, as an element of the charged offense, that defendant was negligent in the operation of his vehicle. The prosecution argued, in contrast, that the applicable jury instruction, M Crim JI 15.19, provides that to prove the charge of committing a moving violation causing serious impairment of a body function, the prosecution is required to prove only (1) that the defendant committed a moving violation; and (2) that the defendant's operation of the vehicle caused a serious impairment of a body function to the victim.

The district court granted defendant's motion. The prosecution subsequently filed an application for leave to appeal the district court's order in the Washtenaw Circuit Court, which denied the application. The Court of Appeals granted the prosecution's application for leave to appeal the Washtenaw Circuit Court's denial of its application.

On appeal, the prosecution contended that MCL 257.601d encompasses a pre-existing negligence component such that the district court's requirement of proof of negligence as a separate, distinct element was superfluous and contrary to legislative intent. Alternatively, the prosecution contended that the statute is a constitutional, strict liability offense.

The Court of Appeals agreed.

MCL 257.601d(4) states:

As used in this section, "moving violation" means an act or omission prohibited under this act or a local ordinance substantially corresponding to this act that involves the operation of a motor vehicle, and for which a fine may be assessed.

The Court held "It may be inferred from the Legislature's use of the term 'moving violation,' without any reference to a mens rea requirement, that it intended to dispense with the criminal intent element and make committing a moving violation causing serious impairment of a body function a strict liability offense."

The Court concluded "Because the Legislature impliedly intended to make MCL 257.601d a strict liability offense, the prosecution is required to prove solely (1) the commission of a moving violation; (2) another person suffered a serious impairment of a body function; and (3) a causal link between the bodily injury and the moving violation, i.e., factual and proximate causation. The prosecution is not required to also prove that defendant operated his vehicle in a negligent manner, and the trial court erred in so concluding."

Reversed and remanded.

People v. Lyon, ___Mich App___;___NW2d___ (2015):

Defendant was disabled and used a slow-moving, electric four-wheeled scooter to get around. Traverse City police officers observed defendant travelling along the paved portion of the "curb lane" along Garfield Avenue on his scooter. He was weaving into the traffic lane, causing a backup. When the officers effectuated a traffic stop, defendant was holding an open can of beer. He failed field sobriety tests and admitted that he was intoxicated. Defendant did not challenge that he was intoxicated and in possession of an open container of alcohol. Nor did defendant contest that he was travelling "upon the highway." Rather, defendant argued that his scooter did not qualify as a "vehicle" under the MVC.

MCL 257.33 of the MVC defines a "motor vehicle" as: "every vehicle that is self-propelled . . . . Motor vehicle does not include an electric patrol vehicle being operated in compliance with the electric patrol vehicle act. Motor vehicle does not include an electric personal assistive mobility device. Motor vehicle does not include an electric carriage." A "vehicle" in turn is defined as: "every device in, upon, or by which any person or property is or may be transported or drawn upon a highway, except devices exclusively moved by human power or used exclusively upon stationary rails or tracks . . . . [MCL 257.79.]

The circuit court found that defendant's scooter was "an electric personal assistive mobility device" as exempted from the definition of "motor vehicle." MCL 257.13c defines an "electric personal assistive mobility device" as "a self-balancing nontandem 2-wheeled device, designed to transport only 1 person at a time . . . ."

The Court of Appeals held that the circuit court erred in characterizing defendant's scooter under this definition and that the scooter at issue was a four-wheel device. It agreed with the prosecutor's argument that electronic personal assistive mobility devices are generally called Segways.

The Court of Appeals also held that even if defendant's scooter qualified as an electric personal assistive mobility device, his conduct would not be exempt from prosecution. It stated that defendant's scooter was a device upon which a person was transported upon a highway and therefore he was subject to all the duties applicable to a driver of a vehicle under the MVC.

Reversed and remanded.

People v. Green, ___Mich App___;___NW2d___ (2015):

On July 13, 2013, defendant Green was arrested for operating his motorcycle while intoxicated after he struck and seriously injured a pedestrian. He consented to a blood draw and two vials were taken. An MSP analyst ran two tests on one of the vials with results of .092 grams of alcohol per 100 milliliters of blood.

Defendant moved to have the original sample of blood retested by the same MSP analyst, arguing there was no foundation to establish that the blood draw was the product of reliable principles and methods. Defendant also argued that he would have to pay for an independent test of the second vial of blood and that a test of the second vial would not be a similar sample.

The prosecution appealed the trial court's order granting defendant's motion to retest the sample. It argued that the order did not comply with the terms of MCL 257.625a(6), which grants a defendant a reasonable opportunity to have a person of his or her own choosing administer a chemical test of his or her blood sample.

The Court of Appeals agreed, holding that a trial court lacks the authority to compel a state agency such as the MSP Lab to perform services it does not offer, i.e. chemical testing services for private individuals. Furthermore, the COA acknowledged that even though MCL 257.625a(6) grants a defendant a right to obtain an independent chemical test, "[R]equiring the 'same lab analyst at the same lab' to retest the 'same vial' of blood is not independent from the first test."

Reversed and remanded.

People v. Baldes, ___Mich App___;___NW2d___ (2014):

The Macomb County Prosecutor appealed by leave granted the trial court's decision to sentence defendant to five years' probation and drug treatment court. The defendant's pre-sentence investigation report (PSIR) indicated that the sentencing guidelines recommended a minimum sentence of 57 to 95 months' imprisonment, but the assessor recommended a sentence of three years' probation, subject to the conditions of drug treatment court.

The assistant prosecutor objected to admitting the defendant to drug treatment court and contended that the trial court did not have sufficient reason to depart downward from the

sentencing guidelines.

The trial court determined that it did not need to articulate substantial and compelling reasons to depart downward from the sentencing guidelines in order to admit Baldes to drug treatment court.

The trial court sentenced the defendant to serve five years' probation and a two-year drug treatment court program, which included serving 240 days in jail and successfully completing a rehabilitation program, completing a 30- to 45-day inpatient rehabilitation program on release and subsequently living in a three-quarter house with restrictions, daily support meetings for 90 days, a SCRAM tether, and intensive outpatient counseling.

The Prosecutor contended that the trial court violated MCL 600.1068(2) when it sentenced the defendant to drug treatment court without the prosecutor's approval, and further the prosecutor contended that it did not approve of the defendant's admission into drug treatment court.

The Court of Appeals agreed with the prosecutor. The Court stated "The prosecutor clearly indicated on the record that he did not support admitting Baldes into drug treatment court because doing so would constitute a large deviation from Baldes's sentencing guidelines. Accordingly, the prosecutor not only did not approve of Baldes's admission to drug treatment court, he expressly disapproved."

The concluded "The trial court erred when it admitted Baldes into drug treatment court when doing so constituted a departure from Baldes's sentencing guidelines and the prosecutor did not approve."

The Court noted that "It may be the best practice for a prosecutor to waive any deviation from the sentencing guidelines in writing, but an oral approval on the record at the plea, sentencing, or other hearing, would be sufficient**.** However, courts may not admit a defendant into a drug treatment court program when doing so departs from the sentencing guidelines and the prosecutor has not approved."

People of the Township of Bloomfield v. Kane, ___Mich App___;___NW2d___ (2013):

The facts are that the Bloomfield Township Police Department was informed of a disabled vehicle near Interstate I-75. Upon arriving at the scene, the officer found defendant trying to start the vehicle, but there was extensive damage to the vehicle, including damage to the driver's side wheels. Defendant informed the officer that he was driving when he suddenly hit the guardrail. Defendant allegedly told the officer that he took Ritalin, and had not taken the drug in some time, but his mother had given him Xanax, which caused his driving accident. Defendant was transported to a hospital where a blood sample was taken. The lab results from defendant's blood sample indicated that

250ng/mL of Zolpidem, a sedative used to treat insomnia sold under the brand name Ambien, was detected.

Defendant was initially charged with operating while intoxicated, MCL 257.625(8), but the charge was dismissed, and he was charged with operating while intoxicated, specifically while under the influence of a controlled substance, MCL 257.625(1). Defendant filed a motion to dismiss in district court, alleging that Zolpidem was not a controlled substance contained in schedules 1 to 5 of the controlled substances act, MCL 333.7101 *et seq*.

The district court denied the motion to dismiss, holding that the regulation of Zolpidem by administrative rule was sufficient to support the elements of the offense. On appeal, the circuit court reversed, holding that Zolpidem was not listed, by statute, as a controlled substance, and the offense at issue, MCL 257.625(1), did not incorporate the rules promulgated by the Board of Pharmacy; therefore, plaintiff could not establish the elements of the offense of operating a vehicle while under the influence of a controlled substance.

The Court of Appeals disagreed with the Circuit Court's decision.

The Court of Appeals held in pertinent part, as follows: "Rather, the Motor Vehicle Code requires that for purposes of determining what constitutes a controlled substance, the health code must be examined, and the health code appropriately delegates classification of additional drugs through the use of administrative rules, and administrative rules have the force and effect of law. In the area of drug regulation, resort to the flexibility of administrative rules is necessary because new drugs are developed and introduced at a rapid rate coupled with the discovery of new methods to abuse drugs.

Therefore, the Legislature's delegation to the Board of Pharmacy to create penal consequences from board rules is not constitutionally infirm. Zolpidem is classified as a schedule 4 controlled substance pursuant to R338.3123(aaa)."

The Court reversed and remanded the case to the district court for reinstatement of the charge.

People v. Paul Nix, ___Mich App___; ___NW2d___ (2013):

The defendant was in a high-speed chase with several deputies instigated by defendant's flight. Defendant's infant son and four-year-old stepson were in the vehicle at the time and were not restrained by either seatbelts or legally mandated child safety seats. Defendant raced through a maze of streets, taking many twists and turns, with several patrol cars joining the pursuit. During the 24-mile chase, defendant reached speeds of up to 100 miles an hour, crossed the centerline, and flew past traffic signals and signs.

Ultimately, defendant traveled into Benzie County and entered Crystal Mountain Resort. Defendant drove his vehicle up a hill and crashed into the resort's large "Alpine Slide." Defendant escaped on foot and was not captured that night. The deputies searched the vehicle and found no child safety seats for the two small children. One week later, an Arkansas state trooper arrested defendant while he attempted to escape to Mexico with his wife and their children.

Defendant argued that that the prosecution presented insufficient evidence that his actions were likely to cause serious harm to his child passengers in support of the second-degree child abuse charges. Further , the defendant contended that his act of engaging in a high-speed chase with police with his young children unrestrained in his vehicle was not "likely" to cause harm to the children as required to establish a violation of MCL 750.136b(3)(b). The Court of Appeals disagreed!

The Court held that the "Prosecution presented sufficient evidence from which a jury could determine beyond a reasonable doubt that defendant's acts could probably have resulted in serious harm to his young children. Defendant fled from law enforcement with two small children unrestrained in his car. Defendant led the police on a 24-mile chase, reaching speeds of 100 miles an hour."

The Court stated that the "Defendant went off the road, took curves at dangerous speeds, crossed the centerline, and ignored all stop and yield signs along the route. According to the pursuing deputies, defendant's actions likely could have resulted in a collision. The pursuit ended when defendant crashed his vehicle into a large slide erected at the Crystal Mountain Resort. Even defendant's wife admitted that defendant's actions were 'maybe likely to injure' the children."

People v. Brendon Dillon, 296 Mich App 506; 822 NW2d 611 (2012):

The circuit court suppressed the evidence from the search, held MCL 257.709 (dangling ornament statute) void for vagueness, and dismissed the charges against defendant. The prosecution appealed. There are two main issues in this case that the Court of Appeals decided.

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First, the prosecution argues that police officer had reasonable suspicion to stop defendant because defendant's air freshener was potentially obstructing defendant's view, a violation of MCL 257.709(1)(c). The Court of Appeals agreed.

The Court stated that the statute at issue, MCL 257.709, provided at the time of the October 2010 traffic stop at issue, in relevant part: "(1) [a] person shall not drive a motor vehicle with any of the following: . . (c) [a] dangling ornament or other suspended object that obstructs the vision of the driver of the vehicle, except as authorized by law."

The Court held that "The facts and circumstances that the officer knew provided him the requisite articulable and reasonable suspicion to justify the stop. The officer was able to see the air freshener from his patrol car while he was driving behind defendant. Second,

the air freshener was hanging down, at least, two or three inches below the rearview mirror. Third, the officer testified that from his perspective the air freshener obstructed defendant's view. Therefore the Court of Appeals held that the facts and circumstances known to the officer provided reasonable suspicion that a traffic violation was occurring, which justified the traffic stop."

Second, the prosecution argued that MCL 257.709 is not facially void for vagueness or unconstitutional as applied. Once again, the Court of Appeals agreed with the prosecution.

The Court held that "The statute, MCL 257.709, is not facially void for vagueness or unconstitutional as applied to defendant. The statute uses commonly understood, definite terms that place ordinary citizens on notice of the prohibited conduct and provides police officers sufficient guidance to apply the statute in a nonarbitrary and nondiscriminatory way. As used in the statute, "dangling ornament" and "suspended object" are commonly understood phrases."

The Court further held that "These terms are definite and clear enough to permit a citizen of ordinary intelligence a reasonable opportunity to know what the Legislature intended to prohibit and also not so indefinite that unlimited discretion is conferred on police officers to determine whether an offense has occurred."

Reversed and remanded.

People v. Valeriano Acosta-Bautista, 296 Mich App 404; 821 NW2d 169 (2012):
This case arose from a fatal automobile crash. Defendant was charged with violating MCL 257.904(4), which makes it a felony offense for a person to operate a motor vehicle having never applied for a license or with a suspended or revoked license, and cause the death of another person by operation of that motor vehicle. In the circuit court, defense counsel moved to quash the bindover on the ground that defendant did not violate MCL 257.904 because there was no evidence that he had been driving on a suspended or revoked license, or that he had failed to apply for a license or been denied one.

Defense counsel stressed that Mexico and the United States have an agreement whereby each country honors a license issued by the other. The reciprocity through an International Convention Agreement, between Mexico and the United States in this regard is not disputed by the parties on appeal. In response, the prosecutor argued that defendant was in violation of MCL 257.904 because he had no valid license, and additionally urged the trial court to interpret MCL 257.904 as imposing strict liability on the causation element. The circuit court agreed with defendant and ordered that the charge against defendant be dismissed.

The Court of Appeals agreed with the defendant.

MCL 257.904(1) provides:

"A person whose operator's or chauffeur's license or registration certificate has been suspended or revoked and who has been notified as provided in [MCL 257.212] of that suspension or revocation, whose application for [a] license has
been denied, or who has never applied for a license, shall not operate a motor 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
motor vehicles, within this state."

The Court noted that MCL 257.904(1) and (4) prohibit and penalize a person whose operator's license "has been suspended or revoked," a person "whose application for a license has been denied," or a person "who has never applied for a license." The Court further noted that the Defendant's licensing status, as one driving on a valid but recently expired license, is not included in the plain statutory language. The fact that defendant's license was never suspended or revoked was not contested; further, it was not contested that defendant never applied for a Michigan driver's license, and was never denied a driver's license for which he did apply.

Therefore, the Court held that "The defendant was driving on a Mexican issued license as permitted by the convention and the fact that defendant's license was expired at the time of the accident does not implicate the application of MCL 257.904. Consequently, the circuit court did not err when it granted defendant's motion to quash the bindover because this evidence does not demonstrate probable cause to believe defendant is guilty of violating MCL 257.904(4)."

City of Plymouth v Longeway, 296 Mich App 1; 808 NW2d 419 (2012):

Defendant was charged with operating a vehicle while intoxicated (OWI), MCL 257.625(1). The defendant moved to dismiss the charge, arguing that she was not "operating" the vehicle for purposes of MCL 257.35a. The district court denied defendant's motion, but the circuit court reversed and ordered that the charges be dismissed. The Prosecution appealed. The Court of Appeals reversed the circuit court's decision, remanded for reinstatement of the charge, and held that defendant operated the vehicle within the meaning of MCL 257.625(1) because she had "actual physical control" of the vehicle as set forth in MCL 257.35a.

The facts are that a doorman at a martini bar known as "336" alerted Officer Kevin Chumney that he had observed some females in a Pontiac G6 hit a concrete barrier when they entered the parking deck earlier that evening. The doorman advised that the females were leaving the bar and that they appeared to be drunk. Chumney saw the vehicle, which was legally parked. As he approached, another car backed out, and he waited. While waiting, Chumney noticed that the backup lights of the Pontiac were on. He believed that the brake lights were on as well. After the other car drove away, Chumney hesitated because he did not want the Pontiac to back into him. The backup lights turned off, and it appeared that the transmission had been put back into park.

The vehicle "settled a little bit." The tires did not move. Chumney activated his overhead lights and blocked the car. He approached the driver's side and spoke to defendant, who was the driver. The vehicle was still running. Defendant stated that they were not leaving because they were looking for her friend's jacket. Defendant was charged with OWI.

The Court of Appeals held that "Here, defendant was admittedly conscious and alert when she applied the brake, put the car in reverse, and then put the car back into park. She was at all times in actual physical control of the vehicle. Given a plain reading of MCL 257.35a, we find it unnecessary to determine whether defendant also placed the vehicle in a position posing a significant risk of causing a collision."

Reversed and remanded to district court.

People v. Tavernier, 295 Mich App 582; 815 NW2d 154 (2012):

The Defendant appealed by right his bench trial convictions of carrying a concealed weapon, MCL 750.227, felon in possession of a firearm, MCL 750.224f, possession of a firearm during the commission of a felony (felony firearm), MCL 750.227b, operating while intoxicated; occupant under age 16, MCL 257.625(7)(a)(*i*), and possession of marijuana, MCL 333.7403(2)(d).

The Defendant contended that the trial court erred when it denied his motion to suppress evidence based on *Arizona v Gant*, 556 US 332; 129 S Ct 1710, 1719; 173 L Ed 2d 485. The Court of Appeals disagreed. The Court of Appeals noted that in *Arizona v Gant*, 556 US 332, ___; 129 S Ct 1710, 1719; 173 L Ed 2d 485 (2009), the Court held, "We also conclude that circumstances unique to the automobile context justify a search incident to arrest when it is reasonable to believe that evidence of the offense of arrest might be found in the vehicle."

The Court of Appeals held that the facts known to the police officer at the time of the search, coupled with his common sense, based on his experience, training and the totality of the circumstances, were sufficient for the trial court to conclude that it was reasonable to believe the vehicle might contain evidence of drunk driving, "the offense of arrest." The search of defendant's vehicle did not violate the Gant exception to the Fourth Amendment.

People v. Michael Reid, 292 Mich App 508; 810 NW2d 391 (2011):

The defendant argued that the trial court erred in denying his motion to suppress the results of his blood-alcohol test, as well as his motion to dismiss. The defendant's motion to suppress was based upon an argument that he was deprived of his right under MCL 257.625a(6) to have an independent chemical test performed on the blood sample.

The Court of Appeals disagreed.

In this case, defendant's blood was drawn following his arrest on November 13, 2005. The sample was destroyed by the State Police Crime Lab in February 2008 pursuant to a policy to destroy samples two years after receipt unless there is a request to preserve the sample longer. Additionally, the facts showed that there is no indication that, at any time during the over two-year period that the crime lab was storing defendant's blood sample, that defendant made a request for an independent analysis that was denied. Moreover according to the Court, the defendant may not have been particularly motivated to have an independent test of his blood sample performed until after he was actually charged with a crime, he was charged on August 3, 2007. While this was almost two years after his initial arrest, it was still approximately six months before the blood sample was actually destroyed.

The Court concluded that that defendant had more than an ample opportunity to have his blood sample independently tested and, therefore, the trial court did not abuse its discretion in denying defendant's motion to suppress the test results.

Next, the defendant argued that that there was prejudice due to his inability to obtain an independent analysis of his blood sample. Defendant also argued that the prosecutor gained a tactical advantage in the delay in bringing charges because the prosecutor knew that the Michigan State Police would have long since destroyed the videotape of the traffic stop, thus depriving defendant of potentially exculpatory evidence from the videotape.

The Court disagreed and stated that the "Defendant merely speculates that this is the reason for the delay. Indeed, defendant is unable to establish that a videotape ever even existed." The Court further noted that "It would seem that if the prosecutor's motivation in delaying the charges was to wait for any videotape to be reused, the charges would have been brought much sooner than was the case." The Court concluded that the defendant had not shown a due process violation arising from the delay in charging him.

Lastly, the defendant argued that the jury's verdict that he was intoxicated was against the great weight of the evidence. The Court disagreed, and stated "There was substantial evidence of defendant's guilt. The Court noted that "The lab technician testified as to the results of the blood tests, the level of alcohol and drugs in defendant's system, and the effects of the alcohol and drugs on defendant's ability to drive."

Therefore, the Court affirmed defendant's conviction for operating a motor vehicle while intoxicated.

People v. Steele, 292 Mich App 308; 806 NW2d 753 (2011):

The prosecutor appealed by leave granted the trial court's order granting defendant's motion to suppress both defendant's statements to the police and the evidence seized from defendant's vehicle following an investigatory stop.

On March 11, 2010, a desk sergeant received a telephone call from a loss prevention officer employed by Meijer in Jackson. The prevention officer had been trained to identify and monitor customers who might be purchasing precursors to the manufacture of methamphetamine. The prevention officer informed the sergeant that a man had purchased packages of Sudafed and one gallon of Coleman fuel, both of which are known precursors for methamphetamine.

The desk sergeant contacted a road patrol and provided him with the information relayed by the prevention officer. The Officer located the defendant's vehicle and conducted an investigatory stop. The officer then informed defendant that he possessed information that defendant had narcotics in the vehicle and asked defendant whether there were narcotics in the vehicle. Defendant responded that there was methamphetamine in the vehicle's door. The officer proceeded to engage in a brief conversation with defendant during which defendant answered affirmatively when asked if he uses and/or cooks methamphetamine. Defendant also indicated that there were methamphetamine components in the vehicle.

After this conversation, the officer arrested defendant for possession of methamphetamine and for driving without a valid driver's license. The officer handcuffed defendant and placed him in the backseat of his patrol car. He subsequently searched defendant's vehicle and retrieved the methamphetamine that defendant had indicated was in the door.

The officer transported defendant to the Department and placed him in an interview room. After activating the room's recording system, he advised defendant of his Miranda rights. Defendant indicated that he understood and waived those rights. Officer then interviewed defendant, who essentially repeated the statements he had made during the roadside questioning approximately 45 minutes earlier.
At the suppression hearing, the prosecutor argued that the officer had a reasonable suspicion to stop defendant's vehicle based on the combination of the officer's training and experience and the tip of a trained and experienced loss prevention officer who has knowledge of the precursors of methamphetamine and who has reliability with the police.

The Court of Appeals held that defendant's purchase of a combination of methamphetamine precursors from one store, when considered in totality with the officer's training and experience with regard to the manufacture of methamphetamine, formed a solid basis upon which the officer had a reasonable suspicion of criminal activity to justify the Terry stop.

Reversed and remanded for further proceedings.

People v. Barbarich, 291 Mich App 468; 807 NW2d 56 (2011):

The prosecutor's appeal required the Court of Appeals to decide what amount of information supplied by an in-person unnamed citizen informant, who provides a

contemporaneous tip of potentially dangerous or erratic driving, is sufficient to justify an investigative stop of a moving vehicle.

The facts are that the only witness to testify was Michigan State Trooper Christopher Bommarito, who stopped Defendant's vehicle and issued Defendant the citation. Immediately after exiting the parking lot, a red pickup truck passed Bommarito's vehicle, heading northbound on Dix Road. Another vehicle, Defendant's, was traveling in front of the red pickup. As Bommarito passed the red pickup, the woman driver of that vehicle made eye contact with Bommarito, pointed directly to Defendant's vehicle in front of her, and mouthed the words, "Almost hit me." Bommarito immediately made a u-turn, turned on his emergency lights and sirens, and followed Defendant's vehicle into Malarkey's parking lot. Bommarito approached Defendant's vehicle and it was discovered that Defendant was intoxicated. The Defendant was issued a citation for OWI.

During the evidentiary hearing, Bommarito admitted that he made no attempts to speak to the woman in the red pickup before stopping Defendant and that he did not personally observe Defendant driving in a manner that would have justified a stop. In other words, Bommarito stopped Defendant's vehicle solely on the basis of the woman driver's action of pointing to Defendant's vehicle and mouthing the words "Almost hit me." On Defendant's motion to suppress, the circuit court dismissed Defendant's charge of operating a motor vehicle while intoxicated (OWI), MCL 257.625, finding the police officer lacked a reasonable articulable suspicion that Defendant was involved in criminal activity. The Court of Appeals disagreed and reversed.

The Court of Appeals disagreed. The Court relying on *People v. Horton*, 283 Mich App 105, 109; 767 NW2d 672 (2009), stated that the "The woman's action of pointing to the vehicle in front of her was sufficient to accurately identify Defendant's vehicle and provided precise and verifiable information to the officer, which also strongly suggests that the information was reliable. The basis of the informant's knowledge was obvious—it can be inferred from her statement, "Almost hit me," and action of pointing to the vehicle traveling immediately in front of her, that Defendant's vehicle had recently almost come into contact with the woman's vehicle; her tip was clearly based on first-hand and nearly contemporaneous observations, which further strengthens the veracity of the information.

Therefore, under the totality of the circumstances, the officer had a reasonable articulable suspicion that justified an investigatory stop of Defendant's vehicle.

City of Plymouth v. McIntosh, 291 Mich App 152; 804 NW2d 859 (2010):

Defendant was arrested for misdemeanor drunk driving, was detained, and would have been arraigned had he not waived his arraignment. He was released on bond and, similar to the circumstances concerning other misdemeanors for which a citation to appear is generally given, the arresting officer's citation was filed with the court in the form of a Uniform Law Citation and contained the language, "I declare under the penalties of

perjury that the statements above are true to the best of my information, knowledge, and belief.

"Under MCL 257.727c, MCL 764.1e, and MCR 6.615, this citation served as the required sworn complaint. Thus, the circuit court erred in its finding that a second sworn complaint had to be issued before continuation of the case following the entry of defendant's guilty plea."

People v. Lechleitner, 291 Mich App 56; 804 NW2d 345 (2010):

The defendant appealed his conviction for operating a motor vehicle while under the influence of a controlled substance and causing death, MCL 257.625(4).

The facts are that on November 22, 2007 defendant drove his truck on a slippery freeway surface and lost control. The truck struck the right guardrail, then the left guardrail, and then stopped in the middle of the freeway, taking up two lanes. Defendant turned off his headlights and activated his hazard lights, then opened the door and attempted to propel the truck out of harm's way with his leg. Another motorist swerved to miss the truck. A third car, which also had two occupants, swerved to avoid defendant's truck and, in so doing, struck the vehicle that had stopped on the shoulder, killing that motorist. The defendant's BAC was .12 grams of alcohol per 100 milliliters of blood.

On appeal, defendant argued that the trial court applied an incorrect definition of "operate" in concluding that defendant was operating his vehicle at the time of the crash.

Relying on *People v. Wood,* 450 Mich 399; 538 NW2d 351 (1995) the Court of Appeals disagreed with the defendant's argument. The Court stated as follows:

"[A] person who places a motor vehicle in motion or in a position posing a significant risk of causing a collision, remains responsible for that motor vehicle until such time as that vehicle is put into some position where it poses no risk to other drivers. In other words, we cannot simply stop our car in the middle of the road for whatever reason, in this case striking the curbs or striking the sides, but we can't just stop our car in the middle of the road, stagger off somewhere, standing somewhere else, and expect our liability for that vehicle to end. People are responsible for placing that vehicle in a proper environment."

The Court further stated as follows:

'The statute provides that a defendant may be convicted where he "operates a motor vehicle" while intoxicated and by the operation of that motor vehicle causes the death of another person. The statute does not require that the defendant's vehicle be in motion at the time of the accident, but rather that the victim's death be caused by the defendant's operation of the vehicle while intoxicated. In this case, defendant was intoxicated, operated his vehicle, and crashed it, with the result that it sat in the middle of the freeway at night creating a risk of injury or death to others…Thus, we conclude that *Wood*

remains good law and that the trial court properly followed it, and affirm defendant's conviction."

People v. Boucha, 290 Mich App 295; 801 NW2d 899 (2010):

Defendant appealed by leave granted from the circuit court order affirming a district court decision finding Defendant responsible for operating an overweight vehicle in violation of MCL 257.722 and 257.724, a civil infraction.

On January 14, 2008, Defendant hauled a load of pine chips with a tractor-trailer on Maple Valley Road. Defendant had three of his trailer axles raised for approximately two miles through a series of curves. Defendant testified that it would be impossible to negotiate the curves, at any speed, with his axles down because the dropped axles created too much resistance to make the curves

Defendant asserted that he could not lower the axles in the straight sections between the curves because it took too long for the air compressor to pump air into the system that supports the axles and the brakes. He testified that his axles were down after he negotiated the curves and when stopped by the police officer. Defendant alleged that his load was not overweight when all of the axles were down.

A police officer following Defendant concluded that five of the six axles were overweight. The officer testified that he weighed the vehicle with the axles in the position they were in when traveling on the curves in the roadway. Following a formal hearing, Defendant was found responsible for the civil infraction and fined for the violation. The circuit court affirmed the violation, albeit on other grounds. "We granted Defendant's application for leave to appeal. The prosecution has not filed a brief in opposition to the appeal."

The Court of Appeals noted that the police officer testified that he followed Defendant through a series of curves in the roadway. Additionally, Defendant submitted photographs demonstrating that there were eight curves in the roadway with signs warning drivers of the curve in the roadway and the applicable speed limit. Defendant reported that the distance between each sign ranged from two-tenths of a mile to four-tenths of a mile. Therefore, the axle weight requirements were inapplicable during the period in which the axles were raised to negotiate the curves in the roadway. MCL 257.724a(1).

The Court of Appeals further noted that the prosecution did not present any testimony to contradict Defendant's assertions that it was necessary to raise axles to negotiate this stretch of the roadway or the reaction time for compression time in the braking system. Where Defendant raised his axles "to allow the vehicle to negotiate an . . . other turn," the officer should have weighed Defendant with the axles down, MCL 257.724a(2).

Therefore, the Court concluded that in light of the fact that Defendant weighed the vehicle with the axles raised during the curves, contrary to MCL 257.724a(2), Defendant's citation is invalid and must be dismissed.

Reversed.

People v. Short, 289 Mich App 538; 797 NW2d 665 (2010):

The prosecutor charged Defendant with carrying a dangerous weapon with unlawful intent, MCL 750.226, felon in possession of a firearm, MCL 750.224f, carrying a concealed weapon, MCL 750.227, and possession of a firearm during the commission of a felony (two counts), MCL 750.227b. Defendant appeals by leave granted from the trial court's order that denied his motion to suppress evidence.

In light of the United States Supreme Court's decision in *Arizona v Gant,* 556 US __, 129 S Ct 1710, 173 L Ed 2d 485 (2009), which abrogated the well-established rule in *New York v Belton,* 453 US 454; 101 S Ct 2860; 69 L Ed 2d 768 (1981) and its progeny, the issue that was before the Court was whether an officer's good faith reliance on case law that is later overturned may form a proper basis to avoid the operation of the exclusionary rule.

A Michigan State Police trooper testified that on January 13, 2009, at around midnight, he observed Defendant's vehicle traveling west on Webber Street in Saginaw. As Defendant turned north onto Maplewood Avenue, the trooper noticed that Defendant's vehicle did not have a license plate. According to the trooper, Defendant stated that he did not have a driver's license or Insurance. The trooper placed Defendant under arrest for driving with no operator's license and no insurance. The trooper handcuffed Defendant and placed him in the back of the patrol car.

It is undisputed that the trooper searched Defendant's vehicle after Defendant was handcuffed and placed inside the patrol car. As he searched the inside of Defendant's car, the trooper found a rifle with a cut stock, a .223 caliber assault rifle, and four or five ammunition magazines. Defendant filed a motion to suppress evidence of the weapons found in his car on the ground that the search of his vehicle violated his Fourth Amendment rights.

On the day of the suppression hearing, the United States Supreme Court decided *Arizona v. Gant*, 129 S Ct 1710 (2009). The Defendant argues that Gant applies retroactively, the search of his vehicle was unconstitutional pursuant to Gant, and the trial court should not have applied the good faith exception to the exclusionary rule because the exception does not or ought not to apply to warrantless searches under Michigan law. The prosecutor argued that, because the trooper relied on the long-standing rule in *New York v. Belton,* 101 S Ct 2860 (1981), that he could conduct a search of the vehicle incident to Defendant's arrest based on the good-faith exception to the exclusionary rule.

The Court of Appeals noted that this a question of first impression as to whether case law may form the basis of an officer's good faith reliance to avoid exclusion of the disputed evidence at trial. The Court noted that the Sixth Circuit has not ruled on this question, and the federal district courts in Michigan disagree on the matter.

The Court stated that in this particular case "When the trooper searched Defendant's vehicle in this case, the law in this state and, indeed, throughout the country, was well-established and abundantly clear: Under Belton and its progeny, the search of Defendant's vehicle was lawful incident to Defendant's arrest." "In essence at the time the trooper acted, the validity of the search was clearly supported by settled case law that was subsequently abrogated by Gant."

The Court held that the trial court properly applied the good faith exception to the exclusionary rule. The Court further held that the "trooper did not intentionally violate Defendant's rights and he cannot be held responsible for the unlawfulness of the search he conducted."

The case was affirmed.

People v. Chowdhury, 285 Mich App 509; 775 NW2d 845 (2009):

A number of young adults under 21 years of age were allegedly drinking alcoholic beverages at a house party in the City of Troy. The officers proceeded to administer preliminary breath tests (PBTs) to the young adults. One of the officers administered a PBT to the Defendant, which resulted in 0.025.

The City of Troy Ordinance at issue in the case reads in pertinent part, that "A peace officer who has reasonable cause to believe a person less than 21 years of age has consumed alcoholic beverages may require the person to submit to a preliminary chemical breath analysis."

After having been charged with violating the Ordinance, the Defendant moved to suppress the results of the PBT. Defendant argued that the Ordinance was unconstitutional because it allowed a police officer to perform a warrantless search, because warrantless searches are generally considered unreasonable unless an exception applies, and because no exception to the warrant requirement was applicable in his case.

In support of his position, Defendant cited two cases in which the United States District Court for the Eastern District of Michigan had ruled that a similarly worded ordinance and a similarly worded state statute were unconstitutional. See, *Spencer v. Bay City*, 292 F. Supp. 2d 932 (ED Mich, 2003); *Platte v. Thomas Township,* 504 F. Supp. 2d 227 (ED Mich., 2007).

The City of Troy argued that the federal case law relied on by the district court and circuit court failed to adequately address the "special needs" exception to the search requirement. The City contended that the "special needs" exception should be applied in

this case because there is a compelling state interest in protecting young people from the dangers of alcohol abuse and in protecting the general public from the potential consequences of alcohol abuse by young persons.

The Court of Appeals ruled that "the decisions in *Spencer* and *Platte* are well-reasoned and consistent with existing Fourth Amendment law." The Court concluded that the Troy Ordinance was unconstitutional on its face.

As to the "special needs" issue the Court agreed with the *Spencer* Court that "there is nothing special in the need of law enforcement to detect evidence of ordinary criminal wrongdoing and that reasonableness generally requires the obtaining of a judicial warrant." Therefore, the "special needs" exception to the search warrant requirement was not applicable.

People v. Hyde, 285 Mich App 428; 775 NW2d 833 (2009):

The Defendant was arrested for OWI. He told the officer he was diabetic. The officer was unaware of the provision in the implied consent law, MCL 257.625c, which provides that a diabetic is not considered to have given consent for a blood test. The officer requested a blood test, and told the Defendant that if he did not consent, his license would be suspended. The Defendant consented rather than lose his license, and the results were .13.

The Court of Appeals held that taking the blood sample under the implied consent law was improper due to the Defendant's diabetes. They further held that because it was not authorized by the implied consent statute, the Defendant's blood was unconstitutionally seized in violation of the 4th Amendment, and the test results should be suppressed.

People v. Chapo, 283 Mich App 360; 770 NW2d 68 (2009):

Defendant drove a pickup truck over a fire hose firefighters were using to extinguish a fire. A police officer activated the overhead flashers of his patrol vehicle and stopped Defendant's truck. The officer recognized Defendant, but asked for his driver's license, proof of insurance, and registration because he intended to cite him for driving over the fire hose.

After the officer asked Defendant for the documents three or four times, he flipped it through a partially opened window and said "here you go, Bozo." He told the officer he was leaving and would be back for the ticket, and drove a few feet. The officer ordered him to stop; he stopped, but said he was going to leave. The officer ordered him to exit the truck, and said he would be arrested if he continued to leave. Defendant refused to exit the truck. The officer testified he was going to arrest Defendant for hindering or obstructing an officer, if he did not get out. The officer jumped off the running board as Defendant drove off. Defendant testified he drove off only after the officer "went berserk" and shot something at him.

After being convicted, Defendant moved for a new trial and alternatively requested a directed verdict based on a claim there was insufficient evidence to establish the officer was lawfully performing his duties before Defendant's flight. The lower court concluded Defendant was provided adequate notice of the charges against him.

The Court of Appeals agreed and held that the Prosecutor could charge the Defendant with fourth-degree fleeing or eluding a police officer. The court concluded the evidence the police officer was attempting to detain Defendant for the purpose of issuing a citation for driving over the fire hose was sufficient to enable the jury to find beyond a reasonable doubt he was acting in the "lawful performance" of his duties to establish an element of fleeing or eluding a police officer.

People v. Horton, 283 Mich App 105; 767 NW2d 672 (2009):

While on patrol at approximately 2:00 A.M., police officers were flagged down by a man who was pumping gas at a gas station. The man told them that a black male driving a burgundy Chevrolet Caprice was at the gas pumps at another gas station at Grand River and Wyoming, which was approximately a mile away, and was waving an uzi type weapon with a long clip. The tipster reported that the man was approximately 30 years old and seemed to be pretty nervous and upset. The tipster refused to provide his name.

Less than five minutes after speaking to the tipster, officers arrived at the gas station at Grand River and Wyoming, where they observed a burgundy Chevrolet Caprice parked near the pumps. Defendant was in the driver's seat. The officers pulled behind Defendant's vehicle and activated their emergency lights to effect a traffic stop, and then ordered Defendant out of the vehicle. As the Defendant stepped out of his vehicle, one of the officers saw on the seat where Defendant had been sitting a Glock semi-automatic pistol with an extended magazine that protrudes, making it appear to be an uzi type weapon. The Defendant was arrested and charged. He argued on appeal that the tip was no sufficiently reliable to justify a Terry stop.

A brief detention does not violate the Fourth Amendment if the officer has a reasonably articulable suspicion that criminal activity is afoot. Whether an officer has a reasonable suspicion to make such an investigatory stop is determined case by case, on the basis of an analysis of the totality of the facts and circumstances. A determination regarding whether a reasonable suspicion exists must be based on common sense judgments and inferences about human behavior.

The Court held that "The totality of the circumstances provided reasonable suspicion for the police to briefly detain the Defendant in this case. The tipster indicated that he had personally observed an individual waving an uzi-type gun at a specific location approximately a mile away and had just left that location. He described the make, model, and color of the suspect's vehicle. The descriptive information was detailed, and the police corroborated it in less than five minutes.

Information provided to law enforcement officers by concerned citizens who have personally observed suspicious activities is entitled to a finding of reliability when the information is sufficiently detailed and is corroborated within a reasonable period of time by the officers' own observations."

People v. Sadows, 283 Mich App 65; 768 NW2d 93 (2009):

Defendants were charged with a felony OUIL-Third Offense. They had previous conviction prior to the enactment of Heidi's law. The trial court granted the Defendants' motions to quash, concluding MCL 257.625(9) and (11) as amended were not simply sentencing enhancements because the subsections changed the charged offense from a misdemeanor to a felony, and violated the constitutional prohibitions against *ex post facto* laws and the constitutional guarantee of equal protection.

The court of appeals disagreed and held that in *Perkins* MCL 257.625(9) as amended did not violate the prohibition against *ex post facto* laws, and the Supreme Court affirmed the court's decision. Thus, the trial court erred in ruling application of MCL 257.625 as amended violated the prohibition against *ex post facto* laws. As to the equal protection claim, Defendants did not allege the subsections targeted a suspect class.
They failed to establish the amendment was arbitrary and not rationally related to a legitimate government interest.

The court concluded the enhancement provisions were tailored to OUIL repeat offenders, and were rationally related to the government's interest in reducing habitual drunk driving and alcohol-related traffic fatalities.

Note: The following other unpublished court of appeals cases reversed the lower court decisions on the same grounds as *People v. Sadows:*

People v. Hall, case no. 283871, released December 23, 2008;
People v. Hadley, case no. 283280, released March 10, 2009;
People v. Derr, case no. 283985, released February 26, 2009;
People v. Jones, case no. 280698, released January 22, 2009;
See also, People v. Kerr, case no. 285234, released May 26, 2009.

People v. Mullens, 282 Mich App 14; 762 NW2d 170 (2008):

Office Frank Shuler saw Defendant's stop at a red traffic light, pause for a few seconds, and then proceed through the red light. Officer effectuated a traffic stop, and when he approached the driver's side window, he smelled alcohol, and noticed the Defendant's eyes were bloodshot and watery. The officer requested the Defendant to perform field sobriety tests, which the Defendant correctly did not do.

The officer then conducted a preliminary breath test (PBT). The officer testified at the preliminary examination that he checked Defendant's mouth before placing him in the

back of the patrol car, waited 15 minutes, and then administered the test. He also specifically testified that he could not recall whether Defendant had paper in his mouth before administering the test.

Officer Shuler further testified that he checked Defendant's mouth, and found it to be empty, but he subsequently admitted that, when he began to read Defendant his PBT rights, he noticed that Defendant had a little piece of paper in his mouth. Officer Shuler explained that he did not believe that the paper would compromise the PBT results, and therefore waited only a few minutes after noticing the paper before administering the test. Defendant's PBT result was 0.15.

Officer Shuler placed Defendant under arrest. He read Defendant his chemical rights, and asked for a blood sample. Defendant initially consented, and then refused. Officer Shuler then proceeded to secure a search warrant. On the form, he indicated that Defendant "conducted field sobriety test poorly." The officer did not disclose in his affidavit that the Defendant had paper in his mouth less than 15 minutes before he conducted the PBT.

Based on the affidavit, the magistrate issued a search warrant for a blood sample. The blood test revealed that Defendant had a blood alcohol content of 0.11. Defendant was charged, as third offender, with operating a motor vehicle while intoxicated.

The Circuit Court found that the officer recklessly omitted information. The circuit court concluded that on the basis of the remaining information in the affidavit, that a strong odor of intoxicants emanated from Defendant and that Defendant had watery eyes, there was insufficient evidence to support a finding of probable cause to issue the search warrant, and the BAC evidence should be suppressed.

The Court of Appeals stated that the circuit court did not clearly err when it determined that the officer acted intentionally or with reckless disregard for the truth when he omitted this information about the PBT. However, the Court stated that "but the fact that Shuler intentionally or recklessly omitted relevant information does not, by itself, invalidate the warrant."

The court reversed and remanded the case to the circuit court.

People v. Perkins, 280 Mich App 244; 760 NW2d 669 (2008):

The Court of Appeals held that the People of the State of Michigan could charge Defendants for offenses occurring after the effective date of the amended MCLA 257.625 based on prior drunk driving convictions occurring more than 10 years before the effective date of the amendment.

On March 23, 2007, the Isabella County Prosecutor's Office charged the Defendant, Perkins, with OWI-Third Offense. He had four prior drunk driving convictions, including convictions in 1990, 1992, and 1993.

The May 21, 2007, the Isabella County Prosecutor's Office charged the other Defendant, Lesage, with OWI-Third Offense. He had three prior drunk driving convictions, one in 1975 and two in 1991.

Because both Defendants had two or more prior OWI related convictions, they were subject to enhanced sentences under "Heidi's Law." Before the amendment, a Defendant was guilty of a felony only if convicted of 2 or more drunk driving offenses within the prior 10 years. "Heidi's Law" eliminated the 10-year time frame and allowed the use of any prior drunk driving convictions in enhanced sentencing, regardless of the time lapse between it and the present offense.

The Court concluded the trial court erred in ruling that amended MCLA 257.625 violated *ex post facto* protections. Additionally, the Court concluded while "Heidi's Law" worked to the Defendant's disadvantage, the amendment did not attach legal consequences to their previous offenses. "Rather, the amendment made the consequences of their current offenses, which occurred after January 3, 2007, more severe based on Defendant's prior convictions."

The court reversed and remanded the trial court's orders granting Defendants' motion to quash and remanded the cases for further proceedings.

People v. Hrlic, 277 Mich App 260; 744 NW2d 221 (2007):

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 lane without using a turn signal, conducted a traffic stop, and discovered 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.

The 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 different 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 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 rotates 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 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 signal when changing lanes on a highway and is not unconstitutionally vague. The case was reversed and remanded.**

MICHIGAN COURT OF APPEALS DECISIONS
UNPUBLISHED CASES

People v. Donaghy, No. 322677 (Mich App, October 13, 2015):

Following a jury trial, defendant was convicted of the lesser included offense of operating a vehicle while visibly impaired (OWVI), and operating a vehicle with a suspended or revoked license (OWSL).

Defendant was placed under arrest for Operating While Intoxicated (OWI) and refused a blood-alcohol test. The deputy sought and secured a search warrant and defendant's blood was then drawn by a nurse employed by the jail who worked under the supervision of a physician. The blood-test results revealed that defendant's blood-alcohol content was 0.05 grams of alcohol per 100 milliliters of blood, and that defendant had tetrahydrocannabinol (THC), the active component of marijuana, alprazolam (Xanax), methadone, and zolpidem (Ambien) in his system.

First, the defendant argued that the trial court erred in not excluding the results of his blood test, which was done in a room at the jail adjacent to the booking area, because MCL 257.625a(6)(c) required that the blood be drawn in a "medical environment" and the search warrant referenced a blood draw in "the most convenient medical facility." The Court of Appeals disagreed.

The Court held "When a blood sample is taken pursuant to a search warrant, the issue of consent is removed, and the implied consent statute is not applicable. The warrant procedure exists independently of the testing procedure set forth in the implied consent statute."

The Court noted "The blood test was taken pursuant to a search warrant. Accordingly, noncompliance with MCL 257.625a(6)© does not provide defendant with grounds for relief. See *People v. Callon,* 256 Mich App at 323 (rejecting the defendant's argument that the test results should be excluded because MCL 257.625a(6)©'s requirement that the blood be drawn by a 'licensed physician, or an individual operating under the delegation of a licensed physician' was allegedly not followed and the blood was drawn pursuant to a search warrant)."

Further, the Court noted that "Even if, as under *Callon*, the court were to incorporate the statute into the warrant, the statute was satisfied where the blood was drawn by a nurse under a doctor's supervision. The trial court appropriately considered that defendant's blood was drawn in a room to the side of the Assessment room, i.e., the booking area, that the nurse performing the blood draw frequently does so and followed protocol, and that while there is a medical office within the jail, it is not uncommon for the nurses to provide treatment throughout the jail when necessary for the safety of inmates, arrestees, and the staff. Thus, to the extent that the implied-consent statute's provisions were incorporated into the warrant, MCL 257.625a(6)© was not violated because the blood

draw was performed in a ‘medical environment."

Second, the defendant argued that the trial court erred in denying his motion to exclude the blood-test results as irrelevant and confusing to the jury where the prosecution did not present expert testimony to explain how his levels of intoxicating substances could affect his ability to operate his vehicle for the purposes of establishing that he was driving under the influence of intoxicating substances, MCL 257.265(1)(a), or while visibility impaired due to such substances, MCL 257.625(3). The Court of Appeals disagreed.

The Court held "The trial court properly determined that the lack of expert testimony went to the weight, not the admissibility, of the evidence. Even if the court were to accept the defendant’s argument as to the need for expert testimony, any error “would be harmless in light of the evidence of impaired driving independent of” the blood-test results."

Third, the defendant argued that the there was insufficient evidence to sustain his conviction under MCL 257.625(3). The Court of Appeals disagreed.

The Court held "In a light most favorable to the prosecution, the jury could have reasonably inferred that defendant was operating his vehicle in a manner less than that of an ordinary, careful and prudent driver.”

Lastly, the defendant argued the trial court erred in denying his request for an instruction that his consumption of marijuana be presumed legal based on protections afforded under the Michigan Medical Marihuana Act (MMMA). The Court of Appeals disagreed.

The Court held "Based on the circumstances of this case, the trial court’s refusal to provide the jury with the proposed instruction—that defendant’s marijuana use be presumed lawful—was not error requiring reversal."

The Court noted "Section 7(b)(4) does not extend the MMMA’s protections to any instance where a person is operating a vehicle and engaging in the 'medical use' of marijuana; rather, it limits the MMMA’s protections where the person is 'under the influence' of marijuana."

Affirmed.

People v. Hassan, No. 320048 (Mich App, September 10, 2015):

The defendant contended that the trial court erred in refusing to instruct the jury on the affirmative defense of duress. The Court of Appeals disagreed.

The Court stated the following:

“To be entitled to an instruction on an affirmative defense, such as duress, a defendant asserting the defense must produce some evidence from which the jury can conclude that

the essential elements of the defense are present. *People v Henderson,* 306 Mich App 1, 4; 854 NW2d 234 (2014). The elements of duress are as follows:

A) The threatening conduct was sufficient to create in the mind of a reasonable person the fear of death or serious bodily harm;

B) The conduct in fact caused such fear of death or serious bodily harm in the mind of the defendant;

C) The fear or duress was operating upon the mind of the defendant at the time of the alleged act; and

D) The defendant committed the act to avoid the threatened harm. *Henderson,* 306 Mich App at 4-5.

To demonstrate duress, evidence of a threat of future conduct is insufficient; rather, the threatened conduct must be imminent and impending. Id. at 5. A defendant forfeits the defense of duress if he or she does not take advantage of a reasonable opportunity to escape, or if the actor fails to terminate his conduct when the claimed duress loses its coercive force." *People v Lemons,* 454 Mich 234, 247 n 18; 562 NW2d 447 (1997).

The Court held that in this case there was no evidence demonstrating a threat sufficient to create a fear of death or serious bodily harm in the mind of a reasonable person, and there no evidence that defendant feared death or serious bodily harm.

The Court affirmed the defendant's convictions of reckless driving, MCL 257.626(3), felonious assault, MCL 750.82, failure to stay at the scene of an accident that results in serious impairment of a body function or death, MCL 257.617(2), and failure to stay at the scene of an accident that results in injury to any individual, MCL 257.617a(2).

Affirmed.

People v. Ford, No. 322456 (Mich App, August 25, 2015):

Defendant was charged with two counts of operating a motor vehicle while impaired (OWI) causing death, MCL 257.625(4), and two counts of reckless driving causing death, MCL 257.626(4), following a crash in which Andrea Herrera and Eric Fischer died. After a jury trial, defendant was convicted of OWI causing death and reckless driving causing death in the death of Herrera. Defendant was acquitted of OWI causing death in the death of Fischer, but was convicted of a moving violation causing death, MCL 257.602d(1), which was submitted to the jury as a lesser offense of reckless driving causing death.

Defendant's convictions arose out of a collision between the vehicle he was driving, and the vehicle driven by Fischer, in which Herrera was a passenger. Witnesses to the crash testified that defendant's vehicle ran a red light at an intersection and collided with

Fischer's vehicle as it was proceeding through the intersection. Fischer's vehicle was pushed into a semi-truck that was also in the intersection. Herrera was dead on arrival at the hospital, while Fischer died in the operating room.

Kent County Deputy Christopher Goehring testified that he spoke with defendant while defendant was in the back of an ambulance. He could smell a moderate amount of alcohol coming from defendant. Defendant told the deputy that he could not remember the whole night. He remembered where he was coming from, but nothing else. Defendant also said that he had had two beers. Other than the smell of alcohol and defendant's admission that he had been drinking, the deputy did not note any signs that defendant was intoxicated. The ambulance took defendant to the hospital. The deputy also went to the hospital.

An emergency room physician at the hospital treated the defendant. For medical purposes, she requested a chemical analysis of defendant's blood. Defendant's blood alcohol result was .125 percent. The hospital uses a serum test.

At the hospital, Goehring filled out an affidavit for a search warrant for defendant's blood. The warrant was signed by a magistrate. The samples were sent to the Michigan State Police (MSP) crime laboratory. Experts from the MSP crime laboratory testified that the two samples of defendant's blood showed a blood alcohol level .086 and .088 percent by whole blood test. Further, controlled substances were found in defendant's blood, including amphetamines, morphine, and promethazine and promethazine metabolite.

Michele Glinn testified as an expert in forensic toxicology, the analysis of blood, and procedures for a crime laboratory. Glinn testified that "whole blood" is blood that comes from a person's arm. It contains red and white blood cells, as well as other proteins and clotting factors. Hospitals often separate out the red blood cells and proteins, ending up with the water fraction of the blood. Depending on the amount of filtering, this part of the blood is plasma or serum. According to Glinn, because "alcohol partitions into the water," the serum alcohol level is higher than the whole blood alcohol level.

By reducing a serum alcohol level by 16 or 18 percent, one can obtain the whole blood alcohol level. According to Glinn, a decrease in defendant's blood alcohol level from .105 to .087 percent is consistent with the general metabolic range. Glinn further testified that the amphetamine level of defendant's blood was consistent with one dose of the prescription medication Adderall.

Defendant first argued that the trial court erred when it failed to suppress evidence of the blood draw ordered by the physician in the emergency room. The Court of Appeals disagreed.

The Court noted that the following provisions apply with respect to chemical tests and analysis of a person's blood, urine, or breath, other than a preliminary chemical breath analysis:

(e) If, after an accident, the driver of a vehicle involved in the accident is transported to a medical facility and a sample of the driver's blood is withdrawn at that time for medical treatment, the results of a chemical analysis of that sample are admissible in any civil or criminal proceeding to show the amount of alcohol or presence of a controlled substance or both in the person's blood at the time alleged, regardless of whether the person had been offered or had refused a chemical test. The medical facility or person performing the chemical analysis shall disclose the results of the analysis to a prosecuting attorney who requests the results for use in a criminal prosecution as provided in this subdivision. A medical facility or person disclosing information in compliance with this subsection is not civilly or criminally liable for making the disclosure.

The Court held "There is no dispute that evidence of the hospital blood draw met the requirements of MCL 257.625a(6)(e)."

Defendant next argued that the trial court erred in failing to suppress evidence of the blood draw taken pursuant to the search warrant. The Court of Appeals disagreed.

The Court noted that the "Affidavit submitted by Goehring contained the following facts: defendant was the driver of a silver Charger that was involved in an accident; the accident was the result of defendant running a red light; a moderate odor of alcohol emanated from defendant; and defendant said that he had consumed two beers before driving. These facts, when viewed in a common sense and realistic manner, allow a reasonable person to believe that evidence of a crime was in defendant's blood. *Waclawski,* 286 Mich App at 698. Moreover, these facts allowed the magistrate to make an independent probable cause determination. *People v Sloan,* 450 Mich 160, 169; 538 NW2d 380 (1995), overruled in part *People v Hawkins,* 468 Mich 488 (2003)."

The Court held that "At the hearing on defendant's motion to suppress the statements he made in the ambulance, Goehring testified that his purpose in speaking to defendant in the ambulance was to conduct a preliminary investigation into how the accident had happened. Goehring did not take defendant into custody or engage in any conduct that deprived defendant of his freedom of action in any significant way. Accordingly, Goehring was not required to inform defendant of his Miranda rights."

Lastly, the defendant argued that the trial court erred when it instructed the jury on the lesser offense of moving violation causing death.

The Court of Appeals remanded this issue "For the trial court to determine whether defendant requested the instruction on moving violation causing death. If he did, the issue is waived and the conviction stands. If he did not, it was plain error, in light of MCL 257.626(5) and *Jones,* 497 Mich at 157- 158, for the trial court to give such an instruction, and defendant's conviction for moving violation causing death must be vacated.

Affirmed in part, and remanded in part.

People v. Metzner, No. 323971 (Mich App, August 25, 2015):

After a night of drinking at a bar, the defendant went to his car, turned it on, and passed out in the driver's seat. The police discovered him shortly thereafter, woke him up, and performed sobriety tests, which he failed. He was arrested for OWI.

Because he had refused a breathalyzer or chemical test, the police obtained a search warrant for a blood test. Based on the results, the Jackson County Prosecuting Attorney's Office charged him with violating MCL 257.625(1)©, BAC of 0.17 grams or more, and MCL 257.625(1), operating a motor vehicle while intoxicated.

The defendant argued that he was not "operating" his car, and therefore, his arrest was unlawful.

The district court agreed with the defendant and granted his motion to quash the search warrant, and suppressed the evidence of the blood test. The circuit court affirmed.

The Court of Appeals disagreed. The Court noted that even if "the search warrant and the blood draw it authorized were not based on probable cause, and thus unconstitutional the blood test was still admissible because the officer who ordered defendant to submit to a blood test acted in reasonable and good-faith reliance on a search warrant."

The Court further noted "The officer encountered defendant: (1) in the driver's seat of his car; (2) with the engine running; and (3) surrounded by a half-empty (and open) bottle of tequila and case of beer. Defendant and the interior of the car also emitted a strong odor of intoxicants, and defendant himself admitted that he had had too much to drink. Despite his assertions to the contrary, criminal defendants in Michigan have been found guilty of operating a vehicle while intoxicated in similar circumstances."

Reversed and remanded.

People v. Mattison, No. 322139 (Mich App, July 28, 2015):

The Court held that the prosecution presented sufficient evidence for a jury to find defendant had operated her motor vehicle intoxicated even though officers never observed her driving the vehicle.

A witness driving northbound on I-75 observed a vehicle stopped on the side of the highway and engulfed in flames. He called 911. City of Troy Fire Department Captain, who was dispatched to the scene, observed defendant walking around the area of the vehicle. Defendant told responding police officers that she had been coming from a Detroit nightclub when her vehicle had caught fire.

Defendant also mentioned she had consumed two lemon-drop martinis at the club.

Officers observed her to have glassy eyes and slurred speech, and she performed poorly on field sobriety tests. Defendant was placed under arrest for operating while intoxicated third offense. Her blood-alcohol content was a .16. A jury convicted her and she appealed, arguing the prosecution failed to present any evidence that she had operated the vehicle and was intoxicated while doing so.

The Court of Appeals held that defendant's argument, that the actual driver of the vehicle could have fled the scene or been hiding, was pure speculation and not supported by any evidence presented at trial. **The Court of Appeals stated, "Moreover, the prosecution's burden is not to disprove every theory consistent with a defendant's innocence. *People v. Solmonson*, 261 Mich App 657, 662-663; 683 NW2d 761 (2004). The evidence presented, and the reasonable conclusions drawn therefrom, support a finding that defendant drove the vehicle to the scene."**

Affirmed.

People v. Sandoval, No. 321150 (Mich App, June 11, 2015):

Following a jury trial in district court, defendant was convicted of operating a commercial motor vehicle with a blood alcohol level (BAL) of 0.04 or more but less than 0.08. MCL 257.625m(1). The district court subsequently granted a directed verdict of acquittal. On plaintiff's appeal of right, the circuit court reversed the district court's grant of a directed verdict of acquittal and reinstated the jury's guilty verdict. The defendant appealed by leave granted.

The Court of Appeals noted "The constitutional protections against double jeopardy preclude "retrial following a court- decreed acquittal, even if the acquittal is 'based upon an egregiously erroneous foundation.' " Evans v Michigan, __ US __; 133 S Ct 1069, 1074; 185 L Ed 2d 124 (2013), quoting Fong Foo v United States, 369 US 141, 143; 82 S Ct 671; 7 L Ed 2d 629 (1962).

However, "[i]f a court grants a motion to acquit after the jury has convicted, there is no double jeopardy barrier to an appeal by the government from the court's acquittal, because reversal would result in reinstatement of the jury verdict of guilt, not a new trial." Evans, 133 S Ct at 1081 n 9. See also People v Anderson, 409 Mich 474, 483-484; 295 NW2d 482 (1980).

Therefore, the Double Jeopardy Clauses of the United States and Michigan Constitutions did not bar the prosecution's appeal. Evans, 133 S Ct at 1081 n 9; Anderson, 409 Mich at 483-484."

The Court of Appeals agreed with the circuit court that a reasonable inference can be made from the evidence that defendant was operating the vehicle with a BAL between .04 and .08.

Affirmed.

People v. Ali Zaid, No. 320197 (Mich App, May 26, 2015):

In October 2012, veteran Troy police officer pulled defendant's car over for a traffic violation. There is no dispute that the officer had the legal authority to make the stop. Defendant was the lone occupant of the vehicle. The police officer smelled an overpowering odor of unburned marijuana emanating from defendant's car.

The officer also noticed a backpack on the front passenger seat and asked defendant how much marijuana he possessed in the car. Defendant informed the police officer that he had medical marijuana cards. He presented the officer with three cards showing defendant's designation as a medical marijuana primary caregiver for three individuals, one of those cards being expired. Defendant also gave the police officer his own medical marijuana card, showing him to be a qualifying patient.

The officer and defendant proceeded to discuss the amount of marijuana that defendant could legally possess under the law (7.5 ounces based on the three valid cards). Defendant told the officer that he indeed possessed marijuana in the car that he had purchased for $2,000 and that, while he did not know the total weight of the marijuana, it was more than he was permitted to possess under the law.

The officer conducted a search of defendant's car and found marijuana in the backpack, packaged in various-sized plastic baggies. The quantity of marijuana totaled 1.6 pounds or about 25 ounces—more than three times the amount defendant was legally entitled to possess.

At the preliminary examination, the district court declined to bind defendant over on the charge of possession with intent to deliver less than 5 kilograms of marijuana. The basis for the district court's ruling was that the search of defendant's vehicle was unconstitutional, in that there was an underlying *Miranda* violation and the police officer lacked probable cause to conduct the search.

The Court of Appeals disagreed.

It held that, because there was no claim or evidence that defendant's statement about possessing too much marijuana was involuntary or coerced, there was no constitutional violation and the sole remedy for the *Miranda* violation is exclusion of the statement at trial. The statement is not otherwise to be discarded in relation to providing probable cause to search defendant's car, and the ultimate physical fruits of the statement, i.e., the marijuana and other potentially incriminating evidence, are admissible in court.

Reversed and remanded for reinstatement.

People v. Parke, No. 320947 (Mich App, May 21, 2015):

The defendant was charged with one count of operating a motor vehicle while intoxicated, MCL 257.625(1). A jury convicted defendant of the lesser offense of driving while visibly impaired, third offense. MCL 257.625(3) and 11(c). On appeal, the defendant argued that the trial court erred in admitting her blood-test results into evidence because the blood test was not obtained in compliance with MCL 257.625a(6)(c)."

The Court of Appeals disagreed.

The Court held as follows: "Taken together, these cases establish that where, as here, the defendant's blood is drawn pursuant to a search warrant rather than pursuant to the implied-consent statute, the blood need not be drawn by a person designated in MCL 257.625a(6)." People v. Callon, 256 Mich App at 322-323.

Further, the Court held as follows: "The facts and circumstances were sufficient to establish that the blood was drawn from defendant in a sterile manner by a person trained to perform the procedure and that the blood drawn from defendant was the same blood that was tested by the scientist at the police toxicology lab."

Affirmed.

People v. Jose Cortes-Azcatl, No. 319725 (Mich App, April 21, 2015):

This case is the result of a deadly automobile accident that occurred in Woodhaven around 11:00 p.m. on May 14, 2013. A Ford Focus, travelling between 47 to 53 miles per hour, driven by Logan Harbeck, hit a Saturn van, travelling between 15 and 22 miles per hour, driven by defendant. Defendant was travelling west on Van Horn Road and turning left into Woodhaven Place Mobile Home Park; Harbeck was travelling east on Van Horn Road. Harbeck's vehicle "t-boned" defendant's vehicle on the passenger side, where defendant's fiancée, Laura Erwin, sat. Harbeck and his passenger, Jordan Taylor, were injured in the crash. Defendant sustained a head injury, and Erwin died in the accident.

Taylor testified that the Saturn did not signal at all before turning into the mobile home park. Taylor and Harbeck both testified that the Ford Focus' headlights were on. Defendant maintained that he could not see the Ford Focus or any other vehicle travelling east on Van Horn Road before he turned, indicating that the Ford Focus did not have its headlights on.

Although the headlights were destroyed in the accident, Kevin Lucidi, traffic crash reconstructionist for the Michigan State Police, testified that, in his expert opinion, the Ford Focus' headlights were on at the time of impact. Lucidi examined the one light that was not destroyed, the front left marker lamp, and it showed evidence of "hot shock." He explained hot shock as what happens when "the Tungsten that . . . produces the light . . .

stretches [at impact] because the filament is hot." The filament is hot when it's illuminated, which makes it pliable.

Therefore, evidence of hot shock suggests that the lights were on at the time of impact. The front left marker lamp functions "at least as a parking lamp. Which means it would be illuminated in the parking position or the headlight position." Lucidi explained that, in his experience, it was not unusual to find evidence of hot shock in vehicles where the headlight switch was turned to off. He testified that there are various reasons that this might occur, including that the driver of the vehicle, the emergency personnel, or the wrecker driver could have turned the lights off before the vehicle was towed.

At the crash site, defendant told Sergeant Dennis DeWeese that he had drunk beer. DeWeese smelled intoxicants on defendant's breath. Due to defendant's head injury, DeWeese declined to request that defendant perform field sobriety tests but blood analysis later revealed that defendant had a blood alcohol level of .15 grams of alcohol per 100 milliliters of blood.

Defendant argued that there was insufficient evidence for the jury to find that he proximately caused Erwin's death because the evidence did not support beyond a reasonable doubt that his intoxication was the cause of the accident. Although defendant admitted that he was intoxicated at the time of the accident, he argued that there was insufficient evidence for a jury to find that the Ford Focus' headlights were on at the time of the accident. Defendant argued that the lack of headlights was the cause of the accident and that the prosecution failed to prove, beyond a reasonable doubt, that the headlights were on at the time of the accident. He also argued that Lucidi's testimony regarding "hot shock" was unreliable.

The Court of Appeals disagreed with defendant, stating that Lucidi's testimony was just one part of the evidence that supported the prosecution's theory that the Ford Focus' headlights were on. The jury also heard from Taylor and Harbeck who both testified that the headlights were on. Defendant testified that he could not see the Ford Focus approaching. The Court of Appeals held that the jury plainly determined that Taylor and Harbeck were credible and defendant was not.

The Court of Appeals also rejected defendant's argument that Lucidi's testimony regarding "hot shock" was unreliable. It stated that Lucidi had testified that he had 18 years of experience reconstructing crash scenes and that from this experience he believed that at the time of impact the left lower fender light of the Ford Focus was on. The Court of Appeals held that the jury's verdict supported that it accepted his testimony as credible and that the Court of Appeals would not disturb that verdict.

Affirmed.

People v. Kiley, No. 320399 (Mich App, April 21, 2015):

On May 10, 2013, at approximately 9:30 p.m., police officer Matthew Leirstein pulled over the vehicle defendant was driving. Officer Leirstein had checked the vehicle's license plate and found that the car belonged to a woman whose license was suspended or revoked. Officer Leirstein, who testified that he did not know the driver's gender before approaching the car, pulled defendant over and approached the vehicle. At this point, Officer Leirstein realized defendant was a man, not a woman. Officer Leirstein continued to detain defendant, and asked for his license because "when we make a stop, it's normal procedure to ask for license, registration, and proof of insurance." When Officer Leirstein approached the vehicle, he smelled alcohol. Officer Leirstein performed field sobriety tests on defendant, which defendant failed. Defendant then admitted he had consumed alcohol. A blood alcohol test was performed and defendant's blood alcohol level was found to be .15.

Defendant was subsequently charged and filed a motion to suppress the evidence obtained after the stop and to dismiss the case, arguing first that the initial stop of his car was not supported by reasonable suspicion.

The Court of Appeals rejected defendant's argument, relying on its previous holding in *People v. Jones*, 260 Mich App 424 (2004) where it held that "[a] police officer may properly run a computer check of a license plate number in plain view even if no traffic violation is observed and there is no other information to suggest that a crime has been or is being committed." *Id*. at 427-428.

The Court of Appeals also rejected defendant's argument that the police officer lacked reasonable suspicion to stop the vehicle because he lacked an articulable suspicion that the car's owner, a woman, was driving, because he could not ascertain the sex of the driver. The Court of Appeals once again referred to *Jones* where it stated "[i]n the absence of evidence to the contrary, a police officer may reasonably suspect that a vehicle is being driven by its registered owner." *Id*. at 428.

Defendant also asserted that, even assuming there was reasonable suspicion to stop the vehicle, the continued detention of defendant after Officer Leirstein realized he was male and not female was unreasonable.

Once again the Court of Appeals disagreed with defendant. It stated "[w]e do not agree that Officer Leirsten was required to abruptly stop his investigation upon realizing defendant was male and say nothing to defendant by way of explanation of the stop. After making a lawful investigatory stop, it was appropriate for Officer Leirsten to proceed with routine procedure and ask defendant for his driver's license." Furthermore, the Court of Appeals held that upon approaching defendant's vehicle independent suspicion arose based on the fact Officer Leirsten smelled alcohol.

Affirmed.

People v. Stanley, No. 319229 (Mich App, March 24, 2015):

The Michigan Court of Appeals held that a police officer's stop of defendant's vehicle did not violate his Fourth Amendment rights because the officer's conduct was reasonable in scope of the underlying circumstances surrounding the stop.

While patrolling early morning a Bay County sheriff sergeant observed defendant's 1994 Chrysler with no license plate or functioning license plate light. He was approximately a block away when he first noticed the missing plate. The sergeant pulled up less than a car length away and still was not unable to observe plate.

He then activated his lights and initiated a traffic stop for defective equipment and failure to display a visible license plate. Once the vehicle stopped, the sergeant used his spotlight but still couldn't see a plate. He adjusted his spotlight and at that time saw a paper license plate in the window.

The defendant jumped out of the vehicle and began yelling and swearing at the sergeant for pulling him over for no reason.

The sergeant ordered defendant to return to his vehicle and he complied. After receiving defendant's identification, the sergeant discovered that defendant had a suspended license and arrested him for driving while license suspended and malicious destruction of police property.

Defendant filed a motion to quash the charges, arguing that the sergeant did not have reasonable suspicion to initiate a traffic stop because defendant "had a properly displayed, clearly visible, and properly issued paper plate affixed to the rear window of the vehicle."

The Court of Appeals rejected defendant's argument that illumination and visibility requirements contained in MCL 257.686(2) and MCL 257.225(2) apply only to permanent metal registration plates, stating that nothing in the plain language of the statutes mandates that conclusion.

The court further stated that even if temporary registration plates need not be illuminated, the record reflected that the officer did not see any registration plate when he made the stop.

Affirmed.

People v. Salters, No. 317457 (Mich App, November 20, 2014):

Following a bench trial, defendant was convicted of carrying a firearm during the commission of a felony (felony-firearm), MCL 750.227(b)(1), felon in possession of a firearm (felon-in-possession), MCL 750.224(f), carrying a concealed weapon, MCL

750.227, and possession with intent to deliver marijuana, MCL 333.7401(2)(d)(3). He was sentenced to two years' imprisonment for the felony-firearm conviction and to two years' probation for all other crimes. He appeals as of right, challenging the trial court's order denying his motion to suppress evidence.

On August 31, 2012, a police officer observed defendant turn onto eastbound Michigan Avenue in Canton Township. After turning, defendant entered the shoulder, located next to the far left lane. Defendant continued to drive on the shoulder, which was separated from the left lane by a solid yellow line and had diagonal yellow lines running throughout, for approximately 150 yards.

After observing defendant's vehicle on the shoulder, the police officer initiated a traffic stop for improper lane usage. The officer approached the vehicle to ask for defendant's license, registration, and proof of insurance; while doing so, he recognized the odor of marijuana. The officer asked if there was marijuana in the vehicle and defendant replied that there was an ounce in the backseat. In his subsequent search of the vehicle, the officer discovered an ounce of marijuana, an electronic scale, pill bottles, a plastic bag containing smaller plastic bags, and a pistol.

Defendant argued that the trial court erred in denying his motion to suppress the evidence found during the vehicle search. Specifically, defendant asserted that he did not commit a traffic violation and, therefore, no reasonable suspicion existed to justify the traffic stop. The Court of Appeals disagreed.

The Court held that the "Defendant committed a traffic violation when he drove on the shoulder of the roadway and, therefore, the officer had reasonable suspicion to justify the traffic stop."

The Court noted that "According to the Michigan Motor Vehicle Code, a highway or street spans the entire width between the boundary lines. MCL 257.20. The shoulder is the portion of the highway "contiguous to the roadway generally extending the contour of the roadway, not designed for vehicular travel but maintained for the temporary accommodation of disabled or stopped vehicles otherwise permitted on the roadway." MCL 257.59a (emphasis added). "

Therefore, defendant committed a traffic violation pursuant to MCL 257.634 because he did not remain in the lane of the roadway before making his turn.

Next, the Court held that "Defendant also violated MCL 257.647, which regulates vehicle positions for turning."

The Court noted that "Pursuant to MCL 257.647(1)(d), "both the approach for a left turn and a left turn shall be made as close as practicable to the left-hand curb or edge of the roadway." Defendant's approach for the left- hand turn was not made "as close as practicable to the . . . edge of the roadway." It was instead made on the shoulder, beyond the boundaries of the roadway."

In conclusion, pursuant to either MCL 257.634 or MCL 257.647, defendant committed a civil infraction. Because the police officer witnessed defendant committing a traffic violation, the officer had reasonable suspicion to perform a traffic stop.

Affirmed.

People v. Mitchell, No. 311147 (Mich App, November 4, 2014):

A district-court jury convicted defendant of operating a vehicle while visibly impaired (OWVI), MCL 257.625(3), as a lesser included offense of operating a vehicle while intoxicated (OWI), MCL 257.625(1).

The facts are that there was a traffic crash that occurred. in the early hours of May 2, 2009. Defendant did not perform satisfactorily on a "horizontal gaze nystagmus" test, and he displayed trouble walking and turning and maintaining his balance on one foot. The police arrested defendant and he was charged with OWI. At the jail, officers used the DataMaster breathalyzer to twice test defendant's blood- alcohol level.

The results were admitted as exhibits at trial and showed .07 grams of alcohol per 210 liters of breath for the first test and .08 grams of alcohol per 210 liters of breath for the second test.

Felix Adatsi, a toxicologist with the Department of State Police, was qualified as an expert witness in "the field of toxicology and the operation of the [DataMaster]." Adatsi testified that based on defendant's height and weight, if his report of what he drank that evening was accurate, his blood-alcohol content should have been approximately .027 around the time he was stopped and arrested.

Before trial in the district court, the prosecutor moved to exclude defendant's witnesses and exhibits for failure to comply with a discovery order. The trial court granted the motion, and defendant was not permitted to offer any exhibits or witnesses other than himself. After the jury found him guilty of OWVI, defendant moved for a new trial. He argued that the trial court's order excluding his witnesses and exhibits was contrary to law and deprived him of his constitutional right to present a defense.

More specially, the defendant argued that its proffered expert, Dr. Karl Ebner, would have attacked the reliability of the DataMaster results.

The Court of Appeals noted that "Although defendant was able to challenge the reliability of the DataMaster test through his cross-examination of Adatsi, this testing of the evidence may not have been as effective as having an expert witness directly challenge the test results and Adatsi's testimony.

Consequently, it is possible that Ebner would have provided a defense to the OWVI charge that was not otherwise available through cross-examination of prosecution

witnesses." See *Steele,* 283 Mich App at 489 (discussing whether the exclusion of testimony was an unconstitutional deprivation of the right to present a defense or merely an evidentiary error).

Remanded for further proceedings.

People v. Dorrough, No. 315763 (Mich App, October 21, 2014):

Defendant appealed by right his jury-trial convictions of operating while intoxicated causing death, MCL 257.625(4), and reckless driving causing death, MCL 257.626(4), for which he was sentenced to concurrent prison terms of 86 months to 15 years.

The facts are that Jaryn Stevens asked his best friend, Larenzo Bradford, for help because Stevens[1]s car had run out of gas. Bradford responded to Stevens[1]s plight, and Stevens got out of his car as Bradford filled the gas tank for him. Bradford noticed a car approaching from behind Stevens' car faster than normal. Bradford, concerned that the oncoming vehicle was going to hit Stevens' car, told Stevens, [W]e got to move out of the road.[2] Just as the oncoming car was about to hit Stevens'disabled car, it swerved into the lane where both men were standing, hitting them. Bradford was injured and Stevens was killed.

Defendant argued that the trial court erred by declining his request to instruct the jury regarding the alleged contributory negligence of Stevens. In particular, defendant maintains that the jury should have been permitted to determine (1) whether Stevens was grossly negligent in jumping out in front of defendant's vehicle, and (2) whether Stevens'alleged gross negligence was an intervening, superseding cause that displaced defendant's driving as the proximate cause of Stevens[1]s death.

The Court of Appeals disagreed.

The Court noted that "The record showed that Stevens remained inside his disabled car until Bradford arrived with the gasoline necessary to get the vehicle running again. Stevens got out of the car as Bradford filled the gas tank for him. When Bradford noticed defendant's car approaching from behind at a high rate of speed, Bradford told Stevens, [W]e got to move out of the road. This statement was presumably made with great urgency. The record shows that, while Bradford sought protection from Stevens' car, Stevens made a run for it in reaction to the imminent danger."

Therefore, the Court held that "Applying the reasoning of *Feezel* and *Schaefer* to the facts of this case, it is clear that the factual cause of Stevens's death was defendant[1]s conduct, because the death would not have occurred but for defendant[1]s driving. *Schaefer,* 473 Mich at 436.

The defendant next argued that, because the offenses of operating while intoxicated and reckless driving are, by definition, necessarily included lesser offenses of operating while intoxicated causing death and reckless driving causing death, the jury should have been

instructed on these lesser offenses. The Court of Appeals disagreed.

The Court noted that "However, we cannot conclude that the trial court abused its discretion by declining to give the requested instructions because, as the trial court observed, they were not supported by a rational view of the evidence."

Affirmed.

People v. Reeves, No. 315840 (Mich App, August 21, 2014):

While driving his truck in the early morning, defendant struck and killed a bicyclist. Defendant consented to a blood test after the crash, which revealed the presence of several controlled substances, including anti-depressants and cocaine. The prosecution charged him with OWI causing death pursuant to MCL 257.625(4), and a jury convicted defendant after trial in the Ingham Circuit Court.

The defendant argued that the prosecution presented insufficient evidence to secure his conviction.

The Court disagreed.

The Court stated "The prosecution presented ample evidence, in the form of the toxicologist's testimony on defendant's blood sample, that defendant had cocaine (and other substances) in his system when his car struck and killed the bicyclist.

Defendant's contention that the amount of cocaine found in his body was relatively small—and, by implication, that he was not actually under the influence of cocaine when the accident occurred—is of no consequence, because MCL 257.625 only requires the prosecution to demonstrate that the defendant had "any amount" of cocaine in his body at the time of the accident.

This is exactly what the toxicologist's testimony demonstrated, and any rational trier operation of that motor vehicle causes the death of another person"). The Michigan Supreme Court has repeatedly addressed the interpretation of these two elements, and has held that they are separate and distinct, though that interpretation has been called into doubt by recent case law."

The Court further stated "To violate the intoxication element of MCL 257.625(4), a driver does not actually need to be intoxicated or impaired, or have any knowledge of intoxication or impairment—"[MCL 257.625(8)] simply requires that a person have 'any amount' of a schedule 1 controlled substance in his or her body while driving." *People v Derror,* 475 Mich 316, 333–334; 715 NW2d 822 (2006) (emphasis added), overruled in part on other grounds by *People v Feezel,* 486 Mich 184, 205; 783 NW2d 67 (2010).

The other element of the offense—causation—is completely separate from the driver's "intoxication or impairment" and focuses only on whether "the victim's death [was]

caused by defendant's operation of the vehicle." *People v Schaefer,* 473 Mich 418, 433; 703 NW2d 774 (2005) (emphasis in original). In other words, the relevant inquiry for causation is: was "the victim's death . . . caused by the defendant's operation of the vehicle, rather than the defendant's intoxicated manner of operation."

Affirmed.

People v. Darden, No. 314562 (Mich App, April 15, 2014):

The defendant's convictions arose from his involvement in a car crash that killed one person and seriously injured another. The crash occurred when defendant, the driver of a Dodge Ram pickup truck traveling at a high rate of speed in a residential area, while under police surveillance, disregarded a red traffic signal at an intersection and collided with a minivan that had entered the intersection on a green signal. After the collision, defendant and two other passengers from the pickup truck fled on foot. The driver of the minivan was killed and a front-seat passenger in the minivan sustained numerous serious injuries.

The defendant first argued that the evidence did not support his conviction of second-degree murder because there was insufficient evidence that he acted with the requisite malice to be convicted of that offense.

The Court of Appeals disagreed.

The Court of Appeals noted that "Viewed in a light most favorable to the prosecution, the evidence was sufficient to enable the jury to find beyond a reasonable doubt that defendant drove at dangerously excessive speeds through a residential area while attempting to evade the police, during which he ignored a red traffic signal and proceeded into an intersection, colliding with the victims' vehicle in the intersection without having made any effort to stop.

The jury could conclude that the evidence demonstrated that defendant was acting with a wanton and willful disregard of the likelihood that the natural tendency of his conduct would cause death or great bodily harm to other motorists or bystanders**.**

The defendant next argued that his multiple convictions for failure to remain at the scene of an accident resulting in death, MCL 257.617(3), and failure to remain at an accident scene resulting in serious impairment of a body function, MCL 257.626(2), violate the double jeopardy prohibition against multiple punishments for the same offense. Defendant did not raise this double jeopardy issue in the trial court. Accordingly, this issue is not preserved. People v Wilson, 242 Mich App 350, 359-360; 619 NW2d 413 (2000).

The Court of Appeals disagreed.

The Court noted that "These convictions arose out of the fact that one of defendant's

victims was killed and one was seriously injured. Defendant argues that the elements of both offenses are substantially identical and prohibit the violation of the same social norm, indicating that the Legislature did not intend to impose multiple punishments for the two crimes."

People v. Martin, No. 313705 (Mich App, April 15, 2014):

Defendant appealed by right from his jury trial conviction for operating a motor vehicle under the influence of alcohol causing serious injury, MCL 257.625.

The victim was injured when the car defendant was driving, in which she was a passenger, struck a culvert and caught fire. Both defendant and the victim were unconscious when they were removed from the vehicle. Lab analysis of blood drawn from defendant indicated that he had a blood alcohol content of 0.11 grams of alcohol per 100 milliliters of blood. The victim suffered extensive injuries, was in a coma for four months, and was still under the care of a guardian at the conclusion of the trial. Among her injuries are loss of functionality, a brain injury, memory problems, and disfigurement.

Defendant agued that that he was vulnerable as a result of injuries sustained in the crash and that he was in a state of shock. Defendant asserted that the officer who spoke to him in the hospital was aware of his vulnerability and took advantage of him, rendering his statement involuntary.

The Court found "That the police did not coerce defendant into offering the challenged statement."

The Court noted that the case is analogous to *People v Scanlon,* 74 Mich App 186, 188; 253 NW2d 704 (1977), where the defendant confessed to committing a crime when questioned by a police officer while the defendant was hospitalized following a car accident. The defendant was deemed alert to the situation by the trial court, despite having been medicated. Id.

The officer also stated that he first asked a nurse whether defendant “was okay to talk to or if he would be able to.” There was police testimony that defendant appeared to be in shock, but this opinion was based on defendant’s mental state at the accident scene, not after he had been hospitalized.

The Court also found that "Defendant’s Miranda rights were not violated. Miranda warnings are required before questioning when a person is in custody or otherwise deprived of freedom, based on the totality of the circumstances." *People v Mendez,* 225 Mich App 381, 382-383; 571 NW2d 528 (1997).

The Court noted that "The officer testified that defendant was not in custody when he spoke to him in the hospital. Defense counsel asked the officer a series of questions about the setting, but they all went to defendant’s medical condition. Because there is no

indication that defendant was in custody when he was spoken to at the hospital, Miranda warnings were not required."

People v. Crawford, No. 313963 (Mich App, March 27, 2014):

Defendant appealed as of right his bench trial convictions of operating a motor vehicle while intoxicated, third offense MCL 257.625(1), MCL 257.625(9) (count one); third-degree fleeing and eluding, MCL 257.602a(3) (count two); possession of less than 25 grams of heroin, MCL 333.7403(2)(a)(v) (count three); and operating a motor vehicle with a suspended license, MCL 257.904(3)(a) (count four).

The defendant's argument is that there insufficient evidence as it relates to his identity as the driver of the vehicle in question while it attempted to evade the police. The Court of Appeals disagreed.

The Court noted that identity is an element of every offense. *People v Yost,* 278 Mich App 341, 356; 749 NW2d 753 (2008).

The Court stated that "The record contained sufficient evidence for a rational trier of fact to conclude beyond a reasonable doubt that defendant drove the vehicle."

More specifically, the Court noted that "A police officer testified that defendant drove away from his patrol car at a speed in excess of 60 miles per hour, in a 35 mile per hour zone, at which time the officer signaled for defendant to stop. The officer never saw defendant and his passenger switch seats and he observed defendant exit from the driver's side door after the pursuit. A different man exited from the passenger's side. Defendant subsequently reentered the driver's door and drove further. A second officer witnessed defendant do so. Details of the officers' testimony were corroborated by video recordings taken from their patrol cars.

Further, defendant's passenger testified that defendant was the driver of the vehicle. While defendant testified and claimed he was not the driver, he admitted that he was so intoxicated that he could not remember what happened. Being mindful that we do not interfere with the fact-finder's "assessment of the weight and credibility of witnesses or the evidence," *People v Dunigan,* 299 Mich App 579, 582; 831 NW2d 243 (2013).

People v. Beemer, No. 313602 (Mich App, January 21, 2014):

Following a bench trial, defendant appealed by right his conviction of operating a motor vehicle while intoxicated (OWI) causing serious impairment of a body function.

Defendant's conviction arose from his failure to yield at a stop sign and his subsequent collision with a car driven by the victim. Emergency personnel took the victim and the occupants of his car to the hospital, where doctors determined that the victim had a fracture in his wrist. At trial, defendant testified that on the day of the collision he had been drinking beer, and that he was drinking a beer in his car when the collision occurred.

The defendant argued that there was insufficient evidence to establish that the victim suffered a serious impairment of a body function, and therefore there was insufficient evidence to support his conviction. The Court disagreed.

The Court noted that MCL 257.58c, which defines "serious impairment of a body function," does not specify the length of time such a loss must be suffered. The Court further noted that "On the one hand, it does not require that the loss of use be long-lasting or permanent. On the other, it does not specify that any lost use, for no matter how short a time, is sufficient."

The Court held that "There was sufficient evidence presented to establish beyond a reasonable doubt that Ray lost both the use of his hand, MCL 257.58c(b), and of a "bodily function," MCL 257.58c(d), as well as sustaining a "substantial impairment of a bodily function," MCL 257.58c(d)." The victim testified to having problems using his hand and gripping items and still had those problems as of trial. He testified that he has still not recovered full strength, mobility, or dexterity.

Next, the defendant argued that the trial court erred in limiting the expert testimony of the physician who treated him at the hospital. The Court disagreed.

Relying on Michigan Rules of Evidence 702, **the Court held that "The physician was qualified as an expert regarding the emergency medicine diagnosis and the related matters, but not regarding comparing one injury to another on a legal sliding scale.** Indeed, the physician told defense counsel that she did not know how counsel was using the term 'severity,' and that in terms of medical triage, 'severity' had a different meaning. Therefore, she did not have the expertise to offer an expert opinion on the 'severity' of victim's injuries in relation to listed examples of serious impairment."

People v. Jon Smith, No. 312508 (Mich App, December 17, 2013):

A jury convicted the defendant of operating while intoxicated (OWI), operating with a suspended license, and reckless driving, MCL 257.626.

Defendant argued that the OWI conviction violated his due process rights under the United States and Michigan Constitutions. Specifically, defendant contended that the admission of the two breath tests was impermissible because (1) of the lapse in time between defendant's operation of a vehicle and his arrest, and (2) the results of the breath tests were tainted by the consumption of alcohol after driving.

The Court of Appeals disagreed. The Court noted that "There is no Michigan case to support defendant's position. Further, defendant does not appear to make a constitutional argument, rather he merely disagrees with the jury's finding that he operated a vehicle while intoxicated."

The Court noted as follows:

"Here, defendant's breath test results were .16 and .15. As such, over one hour after defendant drove the vehicle, his blood alcohol level was double or nearly double the legal limit.

Therefore, were it true that defendant drank three beers in the hour before police arrived at his home, it is unlikely that three beers would elevate defendant's blood alcohol to the high levels it was measured at in defendant's breath tests. Thus, defendant's claim to have consumed three beers is insufficient to overcome the statutory presumption that defendant's breath test results reflected his blood alcohol content at the time he operated a vehicle. MCL 257.625a(6)(a)."

People v. Leonard Mullins, III, No. 312179 (Mich App, December 10, 2013):

A jury convicted defendant of operating a vehicle while under the influence of alcoholic liquor (OUIL), OUIL causing serious impairment of a body function, and operating a motor vehicle without a driver's license.

Defendant first argued that the trial court effectively coerced the jury's verdict when, in response to the jury's requests for a transcript of an officer's testimony, it failed to provide either a transcript of his testimony or have his testimony read back to the jury.

The Court of Appeals disagreed. **The Court held that "A defendant does not have a right to have a jury rehear testimony. Rather, the decision whether to allow the jury to rehear testimony is discretionary and rests with the trial court. Michigan Court Rule 2.513(P).**

Next, the defendant argued that the evidence was legally insufficient to support his convictions. The Court noted that "The officer testified that he saw defendant crawling from the driver's seat, under the air bags, and exit out the passenger side front door. That testimony, viewed in a light most favorable to the prosecution, permitted an inference that defendant was driving the vehicle at the time of the accident.

The jury reasonably could have concluded that defendant would have no reason to exit the vehicle in such a manner unless he was driving. The credibility of the Officer's testimony, and the determination of what inferences could fairly be drawn from the testimony, was for the trier of fact to resolve."

People v. Larry Scott, No. 307740 (Mich App, December 10, 2013):

The Defendant appealed as of right his jury trial convictions for operating a motor vehicle while intoxicated, third offense, MCL 257.625(1), (9), and operating a motor vehicle while license suspended, second offense, MCL 257.904(1), (3).

Defendant argued that there was insufficient evidence at trial to support his conviction for operating a motor vehicle while intoxicated.

Next the Defendant argued that the prosecution was required to prove that defendant's intoxication materially and substantially increased his risk of causing an accident or endangering others.

The Court of Appeals disagreed as to Defendant's both arguments.

As to the first argument raised by the Defendant the Court of Appeals noted that "The evidence, when viewed in the light most favorable to the prosecution, was sufficient for a rational jury to find that defendant was intoxicated at the time he was operating the vehicle.

More specifically, The Court stated that "The evidence showed that the 2 police officers observed a vehicle speeding and failing to signal when making a left turn. The officers followed and observed defendant exit the driver's side door of the vehicle as it was parked in the middle of the street. One of the officers approached defendant, noticed his glassy eyes and a strong odor of intoxicants on his person, and asked defendant to see his license. Defendant stated that he did not have his license, and he was placed under arrest for driving while license suspended. After failing a field sobriety test, defendant eventually consented to give a blood sample, which was .16.

As to the second argument by the Defendant that the prosecution was required to prove that his intoxication materially and substantially increased his risk of causing an accident or endangering others, the Court of Appeals noted **that "Defendant's argument is bewildering since he acknowledges in his brief on appeal that "the prosecutor must prove defendant operated a motor vehicle while intoxicated, either while under the influence of alcohol or his blood alcohol level (BAL) was above 0.08 grams per 100 milliliter[s] of blood."**

People v. Lamkin, No. 308695 (Mich App, July 25, 2013):

The facts are that defendant drove her car out of her driveway while her neighbor, Gloria McComb, was driving down Island Shore Drive. McComb believed that defendant's car blocked her safe passage down the road, which McComb said narrowed at that point in the roadway. When defendant wouldn't move her vehicle to allow passage, McComb eventually called the police.

Two officers arrived, including the chief of police. After assessing the situation, the chief of police asked defendant to move her vehicle. Defendant responded with anger and profanity and repeatedly refused to move her vehicle. The chief of police then arrested defendant and charged her with resisting and obstructing a police officer.

Defendant argues that the police chief's command to move her car was unlawful because he did not have the authority to give this order under the Michigan Vehicle Code (MVC). MCL 257.1 *et seq*.

The Court of Appeals disagreed.

The Court held that "The police chief was within his authority as a community caretaker and peacekeeper to order defendant to move her car. Further, ample evidence was presented that supported the jury's finding that defendant knew the police chief was a police officer and obstructed the performance of his duties by virtue of her knowing failure to obey his lawful command to move her vehicle. MCL 750.81d(1); MCL 750.81d(7)(a). Viewing the evidence in the light most favorable to the prosecution, a rational jury could have found the essential elements of the crime proven beyond a reasonable doubt, and therefore, defendant's conviction was supported by sufficient evidence."

People v. Lumbreras, No. 311971 (Mich App, July 18, 2013):

The Michigan Court of Appeals held that "It is true that defendant was not "free to leave" during the traffic stop, which is usually the touchstone of "custody" for *Miranda* purposes. *People v Coomer*, 245 Mich App 206, 219; 627 NW2d 612 (2001). However, roadside questioning during a traffic stop is somewhat unique; the focus is whether, under the "reasonable person" test, see *Berkemer v. McCarty*, 468 US 420 (1984), the "suspect's freedom of action is curtailed to a degree associated with formal arrest." See *People v Burton*, 252 Mich App 130, 139; 651 NW2d 143 (2002). It is necessary to consider "the totality of the circumstances" in determining whether a suspect is in custody for *Miranda* purposes. *People v. Steele,* 292 Mich App 308 (2011).

The Court concluded that considering the totality of the circumstances "A reasonable person in defendant's position would not believe they were under the functional equivalent of a 'formal arrest' when the incriminating statements were made."

More specifically, the Court noted that "Although defendant was questioned in the patrol vehicle, she was sitting in the front passenger's seat. The first officer also informed her that she would only receive a citation, in lieu of being taken to jail, if she cooperated, and the record shows that defendant was cooperative. Moreover, defendant was never handcuffed. In fact, defendant walked her dog during the search of her vehicle. In addition, a person seeing that an associate was being handcuffed while she was not would reasonably understand that the situations of the two were qualitatively different. A reasonable person would understand that a handcuffed individual is in custody, and the absence of such restraint sends the opposite message. It is also significant that a relatively short period of time elapsed between the initial traffic stop and the third interrogation."

People v. Richards, No. 314282 (Mich App, June 13, 2013):

The defendant was charged with operating a motor vehicle under the influence of alcohol or a controlled substance, third offense, and DWLS. After arresting him, the arresting officer transported him to the police station, where he refused to take a blood test. The officer obtained a search warrant for an involuntary blood test, defendant was taken to the hospital, and his blood was drawn. The officer then returned the defendant to the police

station for booking. The officer asked the defendant questions from a prepared list, including when his last alcohol and drug use was.

The officer testified that she did not advise defendant of his *Miranda* rights before asking him this question. In response to the question, defendant admitted to marijuana use in the prior two weeks. As a result of his admission, the officer testified that she requested that his blood be tested for marijuana as well as alcohol. The blood results returned positive results for THC (marijuana) and metabolites. The BAC test results came back at .06.

The court held that the trial court correctly ruled that the "booking exception" to *Miranda* did not extend to the question the arresting officer asked the defendant about alcohol or drug use that was asked for "medical purposes." However, remand was necessary for further factual development to determine whether defendant's statement admitting to marijuana use in the prior two weeks was voluntary or was coerced. If it was voluntary, the arresting officer "had every right to use the statement as a basis for the request for testing" defendant's blood for marijuana (in addition to alcohol).

Therefore, because the officer "did not provide defendant with *Miranda* warnings and did not obtain a waiver, the prosecution may not use at trial defendant's statement regarding his use of marijuana two weeks before his arrest." However, "because the failure to administer *Miranda* warnings is not itself a violation of the Fifth Amendment, the exclusionary rule does not apply to automatically exclude all evidence obtained as a result of the unwarned statement."

The Court noted that the U.S. Supreme Court has "ruled that admission of such evidence violates the Fifth Amendment only if the evidence is the fruit of an actual coerced statement." See *Pennsylvania v Muniz*, 496 US 582, 601; 110 S Ct 2638; 110 L Ed 2d 528 (1990).

People v. Wilds, No. 311644 (Mich App, April 2, 2013):

The case arose from a fatal car crash. A blood test performed on the driver, defendant revealed the presence of two nanograms per milliliter of tetrahydrocannabinol (THC). The prosecutor charged defendant with having caused the death of his girlfriend, the passenger. The Prosecutor brought forth two statutory theories pursuant to MCL 257.625(4)(a): that defendant operated his vehicle with any amount of a controlled substance in his body, MCL 257.625(8), and that he drove while under the influence of a controlled substance, MCL 257.625(1).

The Circuit Court ruled that it would instruct defendant's jury that the elements of both theories include that defendant "voluntarily decided to drive knowing that he had any amount of THC in his body." The prosecutor challenged this language as inconsistent with the statute.

The Michigan Court of Appeals granted leave to appeal.

The criminal jury instructions for operating a motor vehicle with any amount of a schedule 1 (i.e. marijuana) controlled substance in one's body causing death, CJI2d 15.11a, describes the elements of that offense as follows:

(2) First, that the defendant was operating a motor vehicle.
(3) Second, that the defendant was operating the vehicle on a highway.
(4) Third, that while operating the vehicle, the defendant had any amount of [marijuana or THC] in [his] body.
(5) Fourth, that the defendant voluntarily decided to drive knowing that [he] had any amount of [marijuana or THC] in [his] body.
(6) Fifth, that the defendant's operation of the vehicle caused the victim's death. [Emphasis added].

On the other hand, CJI2d 15.3a, the instruction for operating a vehicle with any amount of controlled substance in one's body, reads in relevant part:

The defendant is charged with the crime of operating a motor vehicle with a controlled substance in [his] body. To prove this charge, the prosecutor must prove each of the following elements beyond a reasonable doubt:

(1) First, that the defendant was operating a motor vehicle.
(2) Second, that the defendant was operating the vehicle on a highway.
(3) Third, that while operating the vehicle, the defendant had any amount of [marijuana or THC] in [his] body.

The Court of Appeal noted that "Notably, this instruction (CJI2d 15.3a), lacks an element that the defendant voluntarily decided to drive while knowing that he had a controlled substance in his body."

Before trial, the prosecutor moved to amend CJI2d 15.11a by eliminating the fourth element stated in the instruction: "that the defendant voluntarily decided to drive knowing that [he] had any amount of [marijuana or THC] in [his] body." Relying on *People v Derror*, 475 Mich 316, 320; 715 NW2d 822 (2006) overruled in part by *People v Feezel*, 486 Mich 184, 205; 783 NW2d 67 (2010), the prosecutor argued that contrary to the instruction, defendant could be found guilty under MCL 257.625(4)(a) based on the presence of any amount of a controlled substance in his body, regardless whether he knew that THC was present in his bloodstream.

The prosecutor instead proposed that paragraph 5 of the jury instruction (relating to the fourth element of the offense), read: "Fourth, that the defendant voluntarily decided to drive after knowingly ingesting [a controlled substance]. However, the prosecution does not have the burden of proving that Defendant knew or should have known that he had the presence of THC within his body."

The Circuit Court disagreed and ruled that that based on *Feezel*, CJI2d 15.11a correctly states a knowledge requirement for the charge of operating a motor vehicle with any amount of a controlled substance in one's body causing death. The court further found that proof of this knowledge was necessary in order to prove that defendant operated a motor vehicle with any amount of a controlled substance in his body under MCL 257.625(8).

The Court of Appeals reversed the circuit court's decision and held as follows:

"Accordingly, we hold that by identifying as an offense element that the defendant voluntarily decided to drive knowing that he had any amount of controlled substance in his body, CJI2d 15.11a incorrectly states the law."

The Court further held that:

"Summarizing, we hold that to convict defendant under either MCL 257.625(1) or (8), the prosecution need not prove that defendant "voluntarily decided to drive knowing that he had any amount of THC in his body." An instruction to this effect misstates the law and should not be given. If consistent with the evidence, the circuit court should instead instruct that an element of either offense includes "that the defendant voluntarily decided to drive after knowingly ingesting marijuana."

People v. McCleese, No. 307079 (Mich App, March 21, 2013):

The Court of Appeals reversed the circuit court's denying defendant's motion to suppress evidence that was obtained pursuant to an invalid search warrant.

The Court of Appeals held "That the affidavit filed in support of the search warrant in this did not provide a substantial basis for the magistrate's finding of probable cause."

More specifically, the Court stated "The statements in paragraphs 2, 3, and 15 of the affidavit, namely that defendant was "the leader of a continuing criminal enterprise," involved in "drug trafficking activities and money laundering," and "concealing evidence from his drug trafficking activities and . . . money laundering activities," were merely conclusory, self-serving assertions and should have been disregarded by the magistrate. Further, the averments in paragraphs 9, 10, and 11 of the affidavit failed to comply with the requirements of MCL 780.653(b).

These paragraphs contained only conclusory statements claiming that certain unnamed informants had personal knowledge, were credible, or had reliable information."

People v. Jacques, No. 308967, (Mich App, March 19, 2013):

Defendant appealed by right from his convictions of failure to stop at the scene of an accident when at fault resulting in death, MCL 257.617(3), and operating a motor vehicle while intoxicated or visibly impaired causing death, MCL 257.625(4).

The brief facts are that the Defendant struck the victim with his van, killing him. Defendant "freaked out" and left the area without calling for assistance. The next morning, defendant returned and put the victim's body in his van, along with parts of the van that had become dislodged in the crash.

When the police interviewed defendant, he admitted he had been drinking during the day. Defendant admitted to consuming "eight to ten" whiskey drinks as well as beer, and stated that he drank "a lot" before arriving at the Harris camp. Defendant also admitted to smoking marijuana. A blood-alcohol test performed approximately 18 hours after the victim's death did not show any alcohol in defendant's blood. There were witnesses who testified that they confronted defendant months after the incident, and that defendant admitted he was drunk at the time of the accident.

First, the defendant argued that the prosecution's evidence did not establish the causation elements of these two offenses beyond a reasonable doubt. The Court disagreed.

The Court noted that the victim in this case shared many characteristics with the victim in *People v. Feezel,* 486 Mich. 184 (2010). Evidence was offered that a postmortem blood alcohol test revealed that his blood alcohol count was .23, over twice the legal limit for operating a motor vehicle. Further, the evidence indicated that he was struck in the back, and that he was walking on a roadway at night.

However, the Court noted there were also key differences. First, it does not appear that the victim had a sidewalk on which he could have walked, as the shoulder of the road appears to have been composed of snow banks. Additionally, the victim in *Feezel* was walking on an "unlit, five-lane road" in a lane reserved for traffic. Id. at 72. Here, the victim was walking down a rural, gravel roadway with no established lanes of traffic. Further, evidence of the victim's intoxication was not, as in *Feezel,* excluded from evidence; instead, the jury was able to consider and fairly evaluate the significance of that evidence. 486 Mich at 203.

The Court emphasized that "Even more importantly, however, is the simple fact that defendant had reason to know the victim would be in the roadway."

Next, the defendant argued that the prosecution failed to offer evidence that the defendant was "operating while intoxicated."

The Court held that "Viewed in the light most favorable to the prosecution, the evidence allowed a reasonable juror to conclude that defendant was still visibly impaired by alcohol when he struck the victim, less than a half hour after his last drink and consumption of marijuana, after drinking all afternoon and evening at various bars."

People v. Mpofu, No. 307783 (Mich App, January 31, 2013):

Defendant appeals by right his convictions of operating a motor vehicle while intoxicated, third offense, and driving with a suspended license.

Defendant was observed in the driver's seat of a parked vehicle. A door was open, and the motor was running. Defendant smelled of alcohol, was unresponsive, and there were intoxicants in his car. When he was roused, defendant walked away from the scene. The police
detained defendant and arrested him for the crimes of which he was convicted.

Defendant argued that his arrest was unlawful. The Court of Appeals disagreed.

The Court citing *Terry v Ohio*, 329 US 1, 22, 30-31; 88 S Ct 1868; 20 L Ed 2d 889 (1968), stated that "a police officer may approach and temporarily detain a person for the purpose of investigating possible criminal behavior even though there is no probable cause to support an arrest. A brief detention does not violate the Fourth Amendment if the officer has a reasonably articulable suspicion that criminal activity is afoot. Whether an officer has a reasonable suspicion to make such an investigatory stop is determined case by case, on the basis of an analysis of the totality of the facts and circumstances."

The Court noted that "the record demonstrates that Deputy Amber Combs was aware that: (1) "there was a male in a vehicle who was unresponsive or passed out and [a] witness had said that it smelled like he had been drinking;" (2) the suspect was then running away from the scene; (3) defendant matched the description of the suspect given to her by dispatch; and (4) Combs noticed that defendant had bloodshot eyes and smelled of intoxicants.

Therefore, the Court held that "Based on the totality of these "specific and articulable facts," Terry, 392 US at 21, we find no clear error in the trial court's determination that Combs had reasonable suspicion to make an investigatory stop."

Lastly, the Court of Appeals found no clear error in the trial court's determination that the detention was reasonable in scope and nature. The Court citing *People v Zuccarini*, 172 Mich App 11, 14; 431 NW2d 446 (1988) stated that "Contrary to defendant's assertions that being handcuffed, frisked, and placed in Combs's police vehicle violated his Fourth Amendment rights, handcuffing a person does not necessarily transform a reasonable investigatory detention into an arrest."

People v. Decaluwe, No. 307118 (Mich App, January 22, 2013):

The defendant appealed as of right his jury trial convictions of two counts of operating a motor vehicle while under the influence of intoxicating liquor causing serious impairment of body function, MCL 257.625(5).

Defendant was driving when he was involved in a roll-over accident, causing injury to his two passengers, Shawn O'Dell and Cory Uhlbeck. Defendant's good friend, O'Dell, testified that defendant was driving approximately 65 miles an hour when a deer jumped in front of the vehicle. O'Dell testified that defendant swerved to avoid the deer and then the vehicle hit a bump in the road, causing defendant to lose control of the vehicle. Uhlbeck, who was in the back seat of the vehicle, testified that he did not see a deer at the time of the accident as his view was limited. He also testified that when he drove in Iosco County, he saw deer "most of the time."

Defendant argued that the sudden appearance of a deer in the road was an act of God that severed the causal link between his driving and his passengers' injuries. Because of this intervening cause, defendant concluded that no rational jury could have found him guilty of
operating a motor vehicle while under the influence of intoxicating liquor causing serious impairment of body function.

The Court of Appeals disagreed and noted that the defendant's argument was flawed for two primary reasons.

"First, a reasonable jury could have found that there was no deer in the road at the time of the accident. O'Dell testified that he was good friends with defendant and that he saw defendant swerve to avoid a deer in the road. Yet, Uhlbeck testified that he did not see a deer, as he was in the back seat of the car. Moreover, a police officer testified that during two interviews with defendant, defendant never mentioned anything about a deer and actually identified O'Dell as the driver of the vehicle at first. Therefore, a rational jury could have found that this alleged story of a deer's presence was not credible."

Second, the Court of Appeals stated that "defendant has failed to establish that the appearance of a deer, even if true, severed the causal link between defendant's driving and the resulting injuries. In the instant case, a rational jury could have found that the alleged deer was not a superseding force. Uhlbeck specifically testified that the presence of a deer in that area was not unusual and that he saw them all the time.

Thus, a reasonable jury could have concluded that the appearance of a deer was reasonably foreseeable and would not qualify as a superseding cause severing the causal link of defendant's behavior. Therefore, defendant has failed to demonstrate that his convictions were supported by legally insufficient evidence."

People v. Karsten, No. 307339 (Mich App, December 11, 2012) lv den 494 Mich 875; 832 NW2d 389 (2013):

Defendant appealed by right her conviction by a jury of operating a motor vehicle while intoxicated causing death, MCL 257.625(4).

This case arose out of a fatal car crash that occurred in Berrien County. Defendant had a blood alcohol level of 0.18 grams per deciliter (g/dL). Primarily at issue in the appeal was

the evidence of the victim's blood alcohol level, which was measured to be 0.06 g/dL approximately an hour after the crash. The crash itself was not fully investigated because the police were not aware until later that the victim, who initially appeared alert, conscious, and not physically injured, had died of internal injuries.

Defendant stated at the scene that "the other car had stopped" in front of her and that she could not stop herself in time, although she also stated that the victim's car had turned in front of her. The victim apparently stated that he had been in the left hand lane and getting over to exit the freeway. There was no eyewitness testimony or crash reconstruction.

Dr. C. Dennis Simpson, an expert in "retrograde extrapolation of alcohol levels" and "the affect of alcohol consumption on the operation of a motor vehicle," opined that, depending on the precise time of the crash, the victim's blood alcohol level would have been approximately 0.08 g/dL. At all relevant times, a blood alcohol level of 0.08 g/dL was the legal limit for driving while intoxicated. MCL 257.625(1)(b). Dr. Simpson's testimony was, however, not presented to the jury.

On appeal, the Defendant's theory is that the victim in this case was grossly negligent, thereby relieving her of criminal responsibility. Additionally, the Defendant contended that trial counsel was ineffective for not doing so and, additionally, that the trial court erred by not permitting trial counsel to present other evidence of the victim's intoxication.

The Court of Appeals disagreed with the Defendant.

The Court noted "Depending on the facts of a particular case, there may be instances in which a victim's intoxication is not sufficiently probative, such as when the proofs are insufficient to create a question of fact for the jury about whether the victim was conducting himself or herself in a grossly negligent manner. Generally, the mere fact that a victim was intoxicated at the time a defendant committed a crime is not sufficient to render evidence of the victim's intoxication admissible." *Id* at 198

The Court further noted that the facts in this case showed that "Depending on the facts of a particular case, there may be instances in which a victim's intoxication is not sufficiently probative, such as when the proofs are insufficient to create a question of fact for the jury about whether the victim was conducting himself or herself in a grossly negligent manner. Consequently, there was no potentially grossly negligent conduct that the victim's theoretical blood alcohol level could have been relevant to explain." Citing, *People v. Feezel,* 486 Mich 184, at 198-199 (2010)

T**herefore, the Court held "We find that there was no evidence of gross negligence by the victim, and any evidence of the victim's intoxication neither provided nor supported any such evidence. Consequently, the evidence of the victim's intoxication was properly not admitted."**

People v. Rodriguez, No. 307991 (Mich App, October 25, 2012):

The prosecution appealed by delayed leave granted from a circuit court order granting defendant's motion to quash and reducing a charge of operating a motor vehicle while intoxicated causing serious impairment of a body function (OWI-SI), MCL 257.625(5), to operating while intoxicated (OWI), MCL 257.625(1).

The motion to quash was based on the trial court's conclusion that the term "serious impairment of a body function" as used in MCL 257.625(5) should be interpreted pursuant to MCL 500.3135(7) of the No-Fault Act and that sufficient proofs were not offered at the preliminary hearing to meet the standard set forth in that Act.

The facts are that defendant was charged with OWI-SI following an automobile crash in which a passenger in his vehicle was injured. The crash caused multiple fractures including a fracture to the passenger's leg that required surgery to properly reduce the fracture and to internally affix a metal plate to the bone. Evidence was admitted that the injured passenger suffered multiple injuries, including a leg fracture requiring surgery and fixation of a metal plate to the bone.

The Court of Appeals held that there was evidence sufficient to establish probable cause to show that there was "substantial impairment of a body function." The Court even held further that even if they were to impose the standards set out in the No-Fault Act for this threshold, there was probable cause established because the victim had a plate surgically implanted in her leg and that she was unable to make use of her leg and foot for several weeks.

Therefore, because the meaning of the term "serious impairment of a body function" for purposes of OWI-SI is set forth in MCL 257.58c, not MCL 500.3135(7), and because there were sufficient proofs to satisfy the probable cause standard, the Court reversed and remanded for reinstatement of the original felony charge of operating while intoxicated causing serious impairment of a body function.

City of Troy v. Haggarty, No. 305646 (Mich App, September 27, 2012) lv den 493 Mich 953; 828 NW2d 361 (2013):

Defendant contended that he was not operating a motor vehicle when the police found him because his vehicle was in a position of safety.

The Court held that that although defendant was not operating a motor vehicle at the time the police found him, there was sufficient circumstantial evidence for the arresting officer to have reasonable cause to believe that defendant had operated a motor vehicle while intoxicated before the police arrived.

The Court noted circumstantial evidence indicated that defendant operated his vehicle while intoxicated before the police arrived. More specifically, although the police found defendant asleep in the driver's seat of his vehicle at a car wash, the Court noted the

Prosecutor show the following circumstantial evidence that was sufficient to convict the defendant of Operating While Intoxicated (OWI):

• The vehicle's engine was running, the vehicle was in park, the headlights were on, and defendant's foot was on the brake pedal.

• While defendant did not say he had driven there, the vehicle was registered to him and he did not say that someone else had driven him there.
• Defendant smelled of alcohol and was staggering.
• He failed four field sobriety tests.
• Defendant stated that he had been drinking at a bar. Defendant then recanted, saying he had been drinking while at work and that he had left work at 5:00 p.m.
• The citizen who called the police stated that defendant had been there "for some time."
• In conducting an inventory search, the police discovered several small bottles of vodka, but there did not appear to be enough alcohol missing from the bottles to believe defendant had become intoxicated while sitting in the vehicle at the car wash.

It is important to note the 2 published cases that the Court relied upon to reach their decision on this issue. Those cases are *People v. Solmonson,* 261 Mich. App. 657 (2004) and *People v. Stephen,* 2626 Mich. App. 213 (2004).

As to the second issue raised by the defendant, the defendant argued that the district court erred in denying his motion to suppress his statement to the Officer that he was on his way home and had left work at 5:00 o'clock. More specifically, the defendant contended the statement is inadmissible because it was the product of custodial interrogation without benefit of *Miranda* warnings.

The Court disagreed. The Court stated that the Officer's questioning of defendant was brief, defendant was not handcuffed, and he was not confined to the patrol car. Therefore, the concluded that defendant was not "in custody" for the purposes of triggering the need to give *Miranda* warning.

Affirmed.

People v Malik, No. 305391 (Mich App, September 20, 2012):

The defendant argued that MCL 257.625 violates due process because it does not require a driver to know he has consumed a controlled substance and may be intoxicated. The Court of Appeals determined that the Supreme Court had already determined that the driver does not need to know he may be intoxicated: "[t]he plain language of MCL 257.625(8) does not require the prosecution to prove beyond a reasonable doubt that a defendant knew he or she might be intoxicated; it simply requires that the person have 'any amount' of a schedule 1 controlled substance in his or her body when operating a motor vehicle." People v Derror, 475 Mich 316, 334; 715 NW2d 822 (2006), overruled on other grounds People v Feezel, 486 Mich 184; 783 NW2d 67 (2010).n2

The Court of Appeals found regarding defendant's claim that the statute is unconstitutional, the Derror decision also determined that MCL 257.625(8) was constitutional. Id. at 334-341.

In *Feezel,* the majority declined to address whether the statute was constitutional in light of the interpretation provided in *Derror.* See *Feezel,* 486 Mich at 211-212 (opining that the majority's interpretation of MCL 257.625(8) "was probably unconstitutional", but declining to address the constitutional issues). As such, the portion of the *Derror* decision determining that the statute was constitutional remains binding on the Court. *O'Dess v Grand Trunk Western R Co,* 218 Mich App 694, 700; 555 NW2d 261 (1996).

People v. Parker, No. 304295 (Mich App, September 11, 2012):

The Defendant appealed his jury trial conviction of driving while license suspended—2nd offense (DWLS). The defendant was also convicted of operating while intoxicated—3rd offense (OWI).

A Michigan State Police Trooper testified that the Defendant's license was suspended at the time of arrest. A certified copy of defendant's driving record was admitted into evidence. It indicated that defendant's license was suspended on the day of his arrest. The Trooper however, did not testify and there is nothing in the record to indicate that Parker was notified that his license had been suspended. Moreover, the jury was not instructed that it had to find that Parker had notice of the suspension in order to convict him of DWLS 2nd.

The defendant argued that the prosecution presented insufficient evidence at trial to convict him of DWLS 2nd. The Court of Appeals agreed.

The Court noted that the elements of DWLS are as follows: (1) operation of a motor vehicle on a highway, public place or place generally accessible to motor vehicles; (2) while the driver's license was suspended, revoked, or application has been denied (or the driver never applied for a license); and (3) the driver was provided notice of the suspension or revocation of his or her driving privileges by personal delivery or first-class mail, as established by statute.

The Court further noted that at trial, the prosecution offered sufficient evidence to establish two of the three elements for DWLS. However, according to the Court, the record, however, fails to establish that the prosecution offered any proof—either direct or circumstantial—that Parker received notice of his suspended license. Because this is an essential element of the crime of DWLS, the defendant's conviction must be reversed.

Additionally, even if the driving record or Jones' testimony had established that defendant received notice, the trial court did not instruct the jury that notice had to be proved in order to convict the defendant of DWLS.

The Court affirmed the defendant's OWI 3rd conviction, but reversed the defendant's conviction of DWLS 2nd.

People v. Bastien, No. 304817 (Mich App, July 31, 2012) lv den 493 Mich 921; 823 NW2d 572 (2012):

The defendant appealed as of right his jury trial convictions.

The facts are that on August 18, 2010, Jennifer Gollnick and her nine-year-old daughter, Amy Gollnick, went for a bicycle ride on a road near their home in Hillsdale County. Shortly after they began their ride, a minivan, driven by a man later identified as defendant, struck them from
behind killing Amy and seriously injuring Jennifer.

The jury convicted defendant of OWI causing death, OWI causing serious injury, OWI third offense, failure to stop at the scene of an accident when at fault, resulting in death, operating on a suspended license causing death, and operating on a suspended license causing
serious injury.

One of the main issues raised by the defendant is that he argued that his convictions for OWI causing death and OWI third offense violated his right to be free from double jeopardy.

The Court held that the defendant's convictions for OWI causing death and OWI third offense violate double jeopardy because each offense does not require proof of a fact that the other does not. *People v. Garland,* 286 Mich App 1 (2009).

The appropriate remedy in this situation is to vacate defendant's conviction for the lesser offense. *People v Herron,* 464 Mich 593, 609-610; 628 NW2d 528 (2001). Therefore, the Court remanded with instructions to the trial court to vacate defendant's OWI third offense conviction.

It should be noted that although the Court remanded the case based on the afore-mentioned reasons, the Court found find that the trial court did not abuse its discretion when it found that there were objective and verifiable reasons for departing from the guidelines, that these reasons were substantial and compelling. Therefore, the defendant's sentence as an habitual offender, third offender, to 17 to 30 years' imprisonment for the OWI causing death conviction was upheld.

People v. Delpiano, No. 304037 (Mich App, July 26, 2012) lv den 493 Mich 967; 829 NW2d 220 (2013):

The Defendant Nino Edward Delpiano appeals by right his jury convictions of second-degree murder, MCL 750.317, operating a motor vehicle while his license was suspended

or revoked causing death, MCL 257.904(4), failure to stop at the scene of an accident resulting in death, MCL 257.617(3), and failure to use due caution when passing a stationary emergency vehicle causing death, MCL 257.653a(4). The trial court sentenced Delpiano as a fourth habitual offender, see MCL 769.12, to serve concurrent sentences of 45 to 67 ½ years in prison for his second-degree murder conviction and 15 to 30 years in prison for each remaining conviction.

The facts are that the Prosecutor charged the defendant with having committed second degree murder as well as other charges for killing Lieutenant Daniel Kromer in September 2010 while the defendant was operating his motor vehicle.

On appeal, the defendant argued that this Court must reverse his conviction for second-degree murder because there was insufficient evidence from which the jury could find that he had the requisite malice.

The Court noted that "The distinction between the mens rea for manslaughter—gross negligence—and the mens rea for second-degree murder under the wilful and wanton prong is the knowledge that the actor has when he or she engages in the negligent act. If the actor *knows* that he or she placing someone in danger and *knows* that the natural consequence is that someone will likely be killed or suffer great bodily harm, that knowledge elevates the mens rea from gross negligence to the malice sufficient to support a conviction of second-degree murder."

The Court held that "Given the speed and conditions under which Delpiano executed this dangerous maneuver, as well as his proximity to a known pedestrian, a reasonable jury could find that Delpiano knew that—if he were to hit Kromer—the likely result was that Kromer would die or suffer great bodily harm."

Therefore, the Court of Appeals concluded that the prosecutor presented minimally sufficient evidence to establish malice, and affirmed the lower court's decision.

People v. Sherri Chaffee, No. 299758 (Mich App, June 19, 2012):

Defendant was convicted by a jury of one count of operating a motor vehicle while under the influence (OWI) of a controlled substance causing death, MCL 257.625(4)(a), and one count OWI of a controlled substance causing serious impairment of a bodily function, MCL
257.625(5).

The facts are that defendant was involved in a nearly head-on collision that resulted in the death of an individual, and serious injuries to another individual. Before the collision, there was testimony that the defendant was driving erratically, weaving into oncoming traffic and following very closely behind a number of vehicles. At the scene, Defendant admitted to a deputy that she had taken Xanax (Alprazolam) and Ambien (Zolpidem), both of which had been prescribed.

In addition to these medications, a prescription bottle of morphine sulfate was found in her purse. The Defendant retrieved defendant's medications from the purse defendant identified as belonging to her; namely, bottles of Xanax, Ambien, and morphine sulfate.

Based on the crash and his interactions with defendant, the Deputy drafted a search warrant for defendant's blood to check the level of medication defendant had ingested. Deputy went to the hospital to have defendant's blood drawn after the warrant had been authorized. He eventually returned the blood sample to the sheriff's department and secured the sample for testing.

At the jury trial, Dr. Michele Glinn of the Michigan State Police Laboratory was qualified as an expert in forensic toxicology. Dr. Glinn testified in pertinent part, that all three drugs operate on the central nervous system and can cause sleepiness and drowsiness. Moreover, she stated that the effects can be exaggerated when the drugs are taken in combination and that the combination could have had an effect on a person's ability to operate a motor vehicle. Glinn would expect that defendant would have been impaired but she could not say what degree of impairment would exist, however she testified that she would expect that defendant would have appeared sedated.

On appeal, defendant first argued that the trial court erred in admitting testimony and physical evidence regarding levels of morphine and Xanax in defendant's blood, asserting that the level or nature of impairment with respect to these medications could not be determined with certainty and that it therefore, did not make impairment more probable than it would have been absent the evidence. The Court of Appeals disagreed.

The Court held that "We cannot find that the trial court abused its discretion in the introduction of the challenged evidence. The concentration of Xanax and morphine in defendant's blood was relevant because it made it more probable that defendant was operating her vehicle while under the influence of controlled substances. Forensic toxicologist Dr. Michele Glinn testified that morphine and Xanax could affect someone's ability to drive a car."

"Further, Glinn testified that a combination of these two drugs and Ambien could produce an exaggerated affect on one's ability to function because all three are central nervous system depressants that can result in drowsiness and affect reaction time. Moreover, defendant denied taking morphine when questioned at the scene of the accident, making the presence of a measurable amount of morphine in her bloodstream relevant to the question of whether she was operating under the influence of controlled substances."

The Court concluded that "Since the combination of drugs found in defendant's blood directly related to the central issue of whether defendant was operating a motor vehicle under the influence of controlled substances at the time of the accident, the trial court did not abuse its discretion in admitting the evidence, since its probative value was not substantially outweighed by the risk of prejudice to defendant."

Affirmed.

People v. Jacob Coronado, No. 302310 (Mich App, February 14, 2012) lv den 492 Mich 855; 817 NW2d 86 (2012):

Defendant appealed of right his jury convictions of and sentences for third-degree fleeing and eluding, MCL 750.479a(3), resisting and obstructing a police officer, MCL 750.81d(1), driving with a suspended license, second offense, MCL 257.904(3)(b), and operating a vehicle while intoxicated (OUIL), MCL 257.625(1)(a).

The defendant raised several issues in this case. The one issue that should be especially noted is the following issue.

The defendant argued that the trial court erroneously refused to strike the laboratory report for the blood-alcohol test results because a chain of custody had not been established for the blood vials. The Court of Appeals disagreed.

The Court noted that "A prosecutor is not required to establish a perfect chain of custody. *People v White*, 208 Mich App 126, 130; 527 NW2d 34 (1994). Instead, it is only necessary to establish that the evidence is what its proponent claims it to be with a "reasonable degree of certainty." Once a prosecutor has established the chain of custody with a reasonable degree of certainty, "any deficiency in the chain of custody goes to the weight of the evidence rather than its admissibility." Breaks or gaps in the chain of custody do not render evidence inadmissible if a proper foundation has been established."

The Court further noted that "In *People v Cords*, 75 Mich App 415; 254 NW2d 911 (1977), this Court established a test regarding the foundation for admission of blood-test results: [T]he party seeking introduction must show (1) that the blood was timely taken (2) from a particular identified body (3) by an authorized licensed physician, medical technologist, or registered nurse designated by a licensed physician, (4) that the instruments were sterile (5) that the blood taken was properly preserved or kept (6) and labeled and (7) if transported or sent, the method and procedures used therein, (8) the method and procedures used in conducting the test, and (9) that the identity of the person or persons under whose supervision the tests were conducted be established."

In this case, "The phlebotomist and the forensic scientist testified about the blood draw and blood test procedures, respectively. The officer testified that he personally sealed the blood vials in the kit for later testing. No direct testimony established that the blood vials were sent to the laboratory, but this can be established through reasonable inferences from other testimony. The forensic scientist testified that the blood-test kit she received was consistent with other blood-test kits. The kit was received through first-class mail and did not show any sign of tampering. It is reasonable to infer that the kit was properly sent to the laboratory for testing. Moreover, the information on the blood vials matched the information on the accompanying documents. This evidence provides further support for a finding that the blood removed from defendant was the blood in fact tested by the forensic scientist."

Therefore, the Court concluded that "Because the prosecutor had established a chain of custody with a reasonable degree of certainty, the gap in the chain of custody was a matter of weight rather than of admissibility."

People v. Zyrone Sanders, No. 301065 (Mich App, January 26, 2012) lv den 491 Mich 944; 815 NW2d 444 (2012):

The defendant was convicted, following a jury trial, of second-degree fleeing and eluding a police officer, MCL 257.602a(4); resisting, obstructing, opposing, or endangering a police officer, MCL 750.81d(1); and possession of a controlled substance, marijuana, MCL 333.7403(2)(d).

In this case, Officer Kyle Doster with the Portage Police Department was driving a fully marked police car in Portage, Michigan. Doster turned on his overhead lights to make traffic stop, however, the driver of the Cougar did not stop but instead drove through a series of parking lots, and then accelerated away from Doster on side streets. After getting out of the Cougar, the driver ran behind an apartment building. Doster chased the driver, and yelled at him to stop. The driver did not stop and Doster lost him behind the apartment building.

Doster returned to the Cougar and searched for evidence concerning the driver's identity. Doster found court documents with defendant's name and DVDs rented from a Blockbuster Video store which the manager of the Blockbuster confirmed were rented to defendant's account. Additionally, Doster found a jar with green leafy materials inside the Cougar. One fingerprint was lifted off of the jar which was matched to defendant's right index finger. The green leafy materials inside the jar were tested and confirmed to be 18.44 grams of marijuana. Based on what he found in the Cougar, Doster requested defendant's information and photograph from the Michigan Secretary of State database, and between one to several hours following the incident, Doster received defendant's photograph from the Secretary of State. Doster recognized defendant as the driver.

When asked how he recognized defendant as the driver, Doster responded: "the subject had the same physical features as the subject that had exited the vehicle and ran from me. There's a lot of similarities; hairstyle, the glasses being worn looked to be the same, just same basic dimensions and features." Doster also identified defendant in court as the driver of the Cougar.

The defendant first argued that the trial court erred in admitting Officer Kyle Doster's identification of defendant because Doster's use of a single secretary of state photograph was impermissibly suggestive. The Court of Appeals disagreed

The Court held that "Our review of the record leads us to conclude that there existed a sufficient independent basis for the in-court identification. Doster had no prior relationship with or knowledge of defendant. Doster was a police officer focused on

observing and remembering his encounter with the driver. The facts support an independent basis for Doster's in-court identification of defendant."

Therefore, the Court concluded that the trial court's decision denying defendant's motion to suppress was not clearly erroneous.

The defendant next argued there was insufficient evidence of his identity as the driver.

The Court noted that "In addition to the identification testimony, the prosecution offered circumstantial evidence of defendant's identity as the driver. The car contained DVDs rented out to defendant's Blockbuster account and a jar of marijuana upon which defendant's right index fingerprint was imprinted. Circumstantial evidence may be sufficient to prove identity. People v Nelson, 234 Mich App 454, 459; 594 NW2d 114 (1999)."

Therefore, the Court concluded that the circumstantial and identification evidence, viewed in a light most favorable to the prosecution, would allow a rational juror to find that the essential elements of identity was proven beyond a reasonable doubt for all offenses.

People v. Arndt, No. 300310 (Mich App, December 27, 2011):

Defendant appeals as of right his bench trial conviction of operating a motor vehicle while intoxicated, third offense. MCL 257.625(1) and (9)(c). On February 17, 2009, at about 2:45 a.m., defendant was the subject of a traffic stop after he was seen driving 15 mph under the posted speed limit and continually drifting back and forth in his lane of travel. The defendant was eventually placed under arrest for OWI. Defendant was then read his chemical test rights while seated in the patrol vehicle.

Defendant was asked to submit to a blood test, and he was agreeable and consented to the test. The test was completed and defendant's blood alcohol level was determined to be 0.31 grams per 100 milliliters of blood. During the booking procedure defendant was asked if he had any medical conditions and he replied that he did not.

The defendant argued that prior to trial defendant moved, in part, to suppress the results of the chemical blood test on the ground that his Fourth Amendment rights were violated because the arresting officer failed to inform him that the implied consent statute concerning blood draws did not apply to him—a diabetic. MCL 257.625c(2). See also, *People v. Hyde,* 285 Mich App 775 (2009). The Court of Appeals disagreed.

The Court stated that "Here, defendant did not advise the arresting officer that he was a diabetic, although defendant was asked whether he had any medical conditions and whether he was taking any prescribed medication. In fact, defendant was not only asked at the scene of the arrest, but also during the booking process whether he had any medical conditions and neither time did he disclose his diabetes. At the evidentiary hearing

defendant admitted that he never advised the arresting officer that he had diabetes or that he was prescribed medication.

Thus, the arresting officer did not know that defendant was a diabetic; accordingly, he had no reason to advise defendant that the implied consent statute did not apply to him. Unlike in the case of People v. Hyde, 285 Mich App 428 (2009), the arresting officer here did not prevent defendant from making an informed decision."

Therefore, the Court of Appeals rejected defendant's argument that the trial court should have "followed the binding precedent of *Hyde* and suppressed the blood test results."

Next, defendant argues that the confrontation clause was violated when the forensic scientist testified that the blood she tested was defendant's because the lab technician who labeled the vial of blood did not testify. The Court disagreed.

The Court stated that "More importantly, the *Melendez-Diaz v. Massachusetts,* 129 S Ct 2527 (2009) Court noted that it was not holding that "everyone who laid hands on the evidence must be called."

People v. Ratterree, No. 300445 (Mich App, December 27, 2011) lv den 491 Mich 934; 814 NW2d 290 (2012):

Defendant appeals by leave granted from an order of the circuit court affirming his conviction of operating a vehicle while intoxicated (OWI), MCL 257.625(1). Defendant specifically appeals the circuit court's affirmance of the district court's denial of his motion to suppress evidence stemming from a Terry stop1 and to dismiss the OWI charge resulting from the stop.

At approximately 10:00 p.m. on December 28, 2009, Michigan State Police Trooper Carla Aguzzi, while on patrol duty, drove by the Lake Chemung boat launch located on Hughes Road. Aguzzi noticed defendant's vehicle in the parking lot near the boat launch. The vehicle lights were on, but it was not moving. Other than defendant's vehicle, the parking lot was empty. After Aguzzi stopped her patrol car and began backing up, defendant's vehicle began to exit the parking lot. Aguzzi activated her overhead light and initiated a traffic stop before defendant was able to exit the parking lot. Aguzzi approached the driver's side window and noticed the odor of alcohol. Defendant was ultimately charged with OWI.

On appeal, defendant argued that the stop of his vehicle was unconstitutional and that the trial court's denial of his motion to suppress/dismiss was in error. The Court of Appeals disagreed.

The Court noted that "While Aguzzi acknowledged that she never saw defendant driving erratically, nor did she include in her police report that she saw anything that would lead her to believe that defendant was using or selling drugs or committing any particular crime, it makes sense that a police officer would go over

to investigate a vehicle sitting at a boat launch at 10:00 p.m. on a wintery late December night. From Aguzzi's testimony, it is apparent that, based on her experience, criminal activity often occurred in the area near the boat launch."

People v. Thorpe, No. 297936 (Mich App, November 8, 2011):

Oak Park Police Officer Jesse Fullerton received information that there was a possible intoxicated driver at a White Castle on Greenfield Road in Oak Park near Eleven Mile and that the driver was headed northbound on Greenfield Road. The informant, John Tyler Damon, dialed 911 and informed the dispatcher that he was at the White Castle drive-through line and that "the guy in the car ahead of him was drunk." Damon identified himself and provided the police with details of the vehicle including the make – a Pontiac Solstice – and the license plate number.

Fullerton began to follow the Pontiac on Greenfield Road just south of Eleven Mile Road in Oak Park. Fullerton observed the vehicle "weaving in its lane of traffic" and "drive on top of the white line which I believed was crossing the white line on two occasions." Fullerton stopped the Pontiac less than one mile into Berkley. Fullerton approached the vehicle and observed that the driver, defendant, slurred his speech. Fullerton also saw that defendant's eyes were "glassy," and the officer smelled a strong odor of alcohol emanating from the vehicle. Defendant was placed under arrest and transported to the police station where he was read his chemical rights (DI 177 form).

When asked to submit to a breath test, defendant asked if he could have an independent test administered. Fullerton advised defendant that before he could take an independent chemical test, defendant first had to perform the test requested by the officer or risk losing his driving privileges. Defendant then signed the chemical consent form agreeing to take the chemical breath test. The test indicated a blood alcohol level of 0.18. After submitting to the chemical breath test, defendant made no further inquiry into the availability of an independent chemical test.

The defendant raised 4 issues on appeal. Defendant first argued that Fullerton, an Oak Park police officer, violated MCL 764.2a because he pursued and arrested defendant in Berkley. Fullerton failed to notify Berkley of his pursuit and arrest of defendant, in violation of MCL 764.2a. The Court noted that a police officer may act outside his or her jurisdiction if he or she is in pursuit of a suspect. MCL 117.34 provides: "When any person has committed or is suspected of having committed any crime or misdemeanor within a city, or has escaped from any city prison, the police officers of the city shall have the same right to pursue, arrest and detain such person without the city limits as the sheriff of the county**."**

The Court ruled that "Although Fullerton's encroachment into the neighboring jurisdiction violated MCL 764.2a, the encroachment was permissible because Fullerton was in pursuit of defendant. MCL 117.34."

The defendant next argued that Fullerton did not have probable cause to stop defendant's vehicle or to arrest defendant. The Court of Appeals disagreed. The Court noted that "Damon's tip contained sufficient indicia of reliability to provide Fullerton with reasonable suspicion that defendant was intoxicated, justifying the stop." The Court further noted that "Even without the tip, based on his observations Fullerton had reasonable suspicion that justified the investigatory stop of defendant's vehicle."

Next, the defendant argued he did not consent to the chemical breath test administered by Fullerton and that he was forced to take the chemical breath test. The Court disagreed.

The Court held that "Defendant was arrested for a violation of MCL 257.625(1) and therefore is considered to have given consent to chemical tests of his blood, breath, or urine for the purpose of determining the amount of alcohol in his blood, breath, or urine."

Following defendant's arrest, Fullerton advised defendant of his chemical test rights as outlined in MCL 257.625a(6). Defendant then inquired about taking an alternate chemical test. Fullerton informed defendant that he had to first take the test requested by Fullerton before defendant could take an independent test. Defendant then gave written and verbal consent to take the chemical breath test requested by Fullerton. Fullerton administered that test, instructing defendant to blow into the machine. The test revealed that defendant had a blood alcohol level that exceeded the legal limit. Defendant testified that Fullerton did not threaten him or force him to take the chemical breath test

Lastly, the defendant argued that the chemical breath test result should have been suppressed because the Oak Park police refused to provide him with an independent chemical breath test. The Court disagreed. The Court noted that "It is undisputed that defendant requested an independent chemical test and was not given such a test. Notwithstanding this violation, the appropriate remedy is not suppression of the result as defendant requests.

The challenged violation is of a statutory right, and exclusion of evidence is not a proper remedy under these circumstances. See *People v. Anstey,* 476 Mich at 447-448 (a "dismissal, which is an even more drastic remedy [than the suppression of evidence], is not an appropriate remedy for a statutory violation . . . .")

Affirmed.

People v. Ulfig, No. 299708 (Mich App, October 20, 2011):

The defendant appealed as of right from his bench trial convictions of operating a vehicle under the influence of intoxicating liquor, third offense, MCL 257.625(1), (9), and driving with a suspended license, MCL 257.904(1).

Officer Bender of the Novi Police Department Bender testified that he stopped a van to investigate the thefts in the area and because the license plate light was not working. Defendant was the driver of the van. Bender asked for his license and registration, and

noticed that defendant's eyes were red and watery. Defendant admitted that his license had been suspended, and that he had consumed a few beers before driving home. Bender arrested defendant after defendant failed several field sobriety tests. A blood test revealed a blood alcohol level of .24.

Defendant moved to suppress all evidenced gathered after Bender pulled him over on the ground that Bender lacked reasonable suspicion to stop defendant, and therefore violated defendant's Fourth Amendment rights. Defendant argued that Bender had no reasonably articulable suspicion sufficient to pull defendant over because the in-car video proved that the license plate light was working.

The Court noted that "A review of the video reveals that it is inconclusive. However, it does not prove that Bender was mistaken. The testimony that the light was working five days later is not helpful, as there is no testimony about who had access to the vehicle in the interim, or whether the light might have been repaired. Given that the video does not prove the light was on, the trial court was free to find Bender's testimony that the light was broken was credible."

Therefore, Bender was authorized to stop defendant for defective equipment. Affirmed.

People v. Ashley, No. 299251 (Mich App, October 18, 2011) lv den 491 Mich 908; 810 NW2d 582 (2012):

Defendant argued the trial court improperly denied his motion to suppress evidence recovered from an automobile impounded from the gas station parking lot where defendant was arrested.

The Court noted that an inventory search in accordance with departmental regulations is a recognized exception to the warrant requirement. *People v Toohey*, 438 Mich 265, 271; 475 NW2d 16 (1991). An inventory search is part of the community caretaking functions performed by police and must not be used as a pretext for criminal investigation. *Id.* at 274, 276. Similarly, impoundment of a motor vehicle is part of the caretaking function, and the reasonableness of a seizure during impoundment depends on the existence of an established departmental procedure and the absence of pretext for conducting a criminal investigation. *Id.* at 284-285.

The Court stated that "Here, the impound policy stated "[t]hat officers shall impound a vehicle regarded as evidence from a crime scene, a recovered stolen vehicle, a vehicle used in the commission of a felony, or for lack of proper identification." This policy appears to contain reasons for impoundment that do not relate to criminal investigations, which would be reasonable under the police's caretaking functions. However, the policy also provides for impoundment for reasons related to conducting criminal investigations, which would not be valid under the caretaking function, but would instead relate to the automobile exception discussed below."

The Officer listed the reasons for the impound as "driver arrest" and also wrote, "Other. Plate was improper. VIN does not match plate." According to the Court, "These last two reasons would pass muster under both *Toohey* and the impound policy, as they were not related to an investigation, but to the police's caretaking function. Here, where the car was running, unattended, had improper plates, and the perceived driver had been arrested, the impoundment was reasonable, as was the later inventory search." See *Toohey*, 438 Mich at 284.

Further, the Court noted that the officer responded to a report of suspicious activity at a gas station. Upon arriving at the scene, he observed an unoccupied running vehicle that matched the general description of a vehicle that may have been involved in an armed robbery. The officer also observed several credit cards spread across the seat of the vehicle, and during a safety pat down of defendant discovered more credit cards not belonging to defendant on defendant's person. Dispatch later confirmed the names on the cards matched the names of the victims of an armed robbery. In light of these facts, the officer had probable cause to believe that the automobile had been involved in a crime and contained contraband or evidence of the crime, and thus had probable cause to search the vehicle.

Therefore, the Court held that the trial court properly found that, under the totality of the circumstances, the warrantless search of defendant's vehicle was constitutional under the automobile exception to the warrant requirement, as well as the inventory search exception. Defendant's motion to suppress was properly denied. Affirmed.

People v. Tellis, No. 299062 (Mich App, October 18, 2011) lv den 491 Mich 909; 801 NW2d 908 (2012):

A jury convicted defendant of operating while intoxicated, third offense (OWI 3d), MCL 257.625(1), (9), operating a motor vehicle while license suspended or revoked, MCL 257.904(1), and resisting or obstructing a police officer, MCL 750.81d(1).

The facts are that a Michigan State Police Trooper was flagged down by a pedestrian who reported nearly being struck by an older blue Buick driven by a black female. The pedestrian directed the trooper to a vehicle parked in the parking lot of discount store. While he was speaking to the pedestrian, the trooper was altered to a police dispatch reporting an erratic driver in the area driving an older blue Buick. The trooper and other officers spoke with defendant after she exited the store. Defendant was subsequently arrested, and a blood alcohol test revealed that her blood contained .27.

Defendant argued that she was denied her constitutional right to confrontation by the trial court's admission of the taped recording of a 911 call made by an unknown person reporting an erratic driver in the area where defendant was later arrested. Although the call was not transcribed into the record, the arresting officer testified that the caller reported a woman in an older model blue Buick driving erratically in the area where defendant was found and arrested. The 911 caller did not testify at trial.

Citing *Crawford v Washington*, 541 US 36; 124 S Ct 1354; 158 L Ed 2d 177 (2004), defendant argued that the admission of the recorded 911 call violated her Sixth Amendment right to confrontation because of the "testimonial" nature of the caller's statements.

The Court of Appeals disagreed. Relying on *Davis v Washington*, 547 US 813, 822; 126 S Ct 2266; 165 L Ed 2d 224 (2006), the *Davis* Court held the following: statements are non-testimonial when made in the course of police interrogation under circumstances objectively indicating that the primary purpose of the interrogation is to enable police assistance to meet an ongoing emergency.

The Court of Appeals held that "Given the description of the content of the 911 call in issue here, its admission was not error. It appears clear that the purpose of the information given was to elicit help from the police to address what appeared to be a serious emergency to the public."

People v. Garcia, No. 299497 (Mich App, September 20, 2011) 491 Mich 886; 809 NW2d 585 (2012):

The defendant appealed his convictions by jury of carrying a concealed weapon (CCW), felon in possession of a firearm, possession of less than 25 grams of cocaine, possession of marijuana, operating while intoxicated (OWI), and three counts of possession of a firearm during the commission of a felony.

In this case, defendant, who was intoxicated, drove out of the parking lot of a bar. He severely damaged the car he was driving when he drove into another car's lane and side-swiped that vehicle. Defendant was sitting in the driver's seat revving his engine when police arrived. The Officer testified that he ordered defendant to turn off the engine of the car and open the door. As soon as defendant opened the door, the Officer could smell a strong odor of both alcohol and marijuana. Defendant had red glassy eyes and his speech was slurred. The Officer ordered defendant out of the car and instructed him to keep his hands on the car, and then the Officer placed the defendant, who was handcuffed, in the back of his patrol car. The Officer then searched the defendant's vehicle and located illegal contraband.

The Defendant argued that the search of his vehicle without a warrant violated his Fourth Amendment rights, and that any evidence obtained from that search should have been inadmissible. The Court disagreed.

The Court noted that the "T]he basic rule is that searches conducted outside the judicial process, without prior approval by judge or magistrate, are *per se* unreasonable under the Fourth Amendment—subject only to a few specifically established and well-delineated exceptions." *Arizona v Gant,* 556 US 332; 129 S Ct 1710, 1716; 173 L Ed 2d 485 (2009). In *Gant,* the Supreme Court concluded that officers may only search a vehicle incident to arrest if the "arrestee is within reaching distance of the passenger

compartment at the time of the search or it is reasonable to believe the vehicle contains evidence of the offense of arrest."

The Court held that this is a case wherein the offense of the arrest supplied a basis for searching defendant's vehicle. Defendant was clearly intoxicated, and smelled of both alcohol and marijuana, police could not be certain which of the substances had caused defendant's obvious impairment and searching the vehicle for marijuana, alcohol, or other drugs could lead to further evidence of the crime of OWI. Additionally, defendant was also a felon in possession of a firearm. A vehicle search was reasonable to gather further evidence that the weapon belonged to defendant.

Therefore, the Court concluded that the search in this case was a proper search wherein the offenses of the arrest (OWI, felon in possession, CCW), were an appropriate basis for searching the vehicle. Affirmed.

People v. Bennett, No. 296149 (Mich App, August 23, 2011) lv den 490 Mich 993; 807 NW2d 166 (2012):

The Defendant appealed as of right his jury trial convictions for resisting and obstructing a police officer, MCL 750.81d(1), and tampering with evidence, MCL 750.483a(5)(a). Defendant was sentenced as a habitual offender, third offense, MCL 769.11, to concurrent sentences of two months in jail for each conviction.

In this case, the Officer made three or four requests to inspect the helmet that was concealed in the container on defendant's motorcycle, but defendant refused each request. At some point, defendant stood up and told the officers that he did not consent to a search of the container and that he would "take the ticket." The officer informed defendant that if he did not comply, he would be arrested for resisting and obstructing. Defendant refused to produce the helmet and then turned around without being told and placed his hands behind his back. Thereafter, the officer arrested defendant for resisting and obstructing a police officer. Defendant subsequently informed the officers that he threw the keys to the locked container into the bushes. However, the keys to the locked container were located in defendant's pants pocket.

Defendant argued that officer's request to inspect defendant's helmet was unlawful under statutory law, specifically MCL 257.7301 and MCL 257.742(1) and (2).

The issue before the Court is whether the officer's request to inspect defendant's motorcycle helmet was lawful.

Michigan law requires all persons riding a motorcycle on public streets to wear a crash helmet that has been approved by the Michigan Department of State Police. MCL 257.658(4). This law is commonly referred to as the "Helmet Law."

The Court noted that whether the police officers had the legal authority to request to inspect defendant's motorcycle helmet to determine if it conformed to the specifications established by the National Highway Traffic Safety Administration as required by 2000 AC, R 28.951, was recently addressed by the United States District Court for the Western District of Michigan in *Constantino v Michigan Dep't of State Police*, ___ F Supp 2d ___ (WD Mich, May 18, 2011), 2011 US Dist LEXIS 53098 (Bell, J.).

In *Constantino*, the court ruled that it was not illegal under Michigan law for a police officer to inspect the helmet of a motorcyclist who has been detained under MCL 257.658(4). *Id.*, slip op p 21.

The Court of Appeals agreed with Judge Bell's holding in *Constantino* that MCL 257.742(1) authorizes officers to require motorcyclists to remove their helmets for inspection purposes. Therefore, the Court adopted the reasoning from *Constantino* in the present case.

The Court affirmed the Defendant's convictions.

People v. Macuga, II, No. 296893 (Mich App, June 28, 2011) lv den 490 Mich 970; 806 NW2d 737 (2011):

The Defendant appealed as of right his bench trial conviction of operating a vehicle while intoxicated (OWI), third offense. MCL 257.625(1), (9)(c).

On appeal, the Defendant raised two main arguments. Defendant argued that the trial court erred when it declined to suppress the results of the blood test; he claims that a new trial is justified for this reason. He argued that the Officer intentionally included a falsehood in his affidavit in support of the warrant, and therefore, the warrant was invalid.

The Court of Appeals disagreed. The Court held that the valid portions of the Officer's affidavit provided a substantial basis for the magistrate to conclude there was a fair probability that the blood test would provide evidence of OWI. The affidavit described not only defendant's intoxicated odor, appearance, and behavior, but his two PBT readings of 0.185. The affidavit also left no question that defendant was operating a vehicle and committed at least two traffic infractions just before he was pulled over. Further, because it was proper for the trial court to evaluate the affidavit by severing the untainted portions, it ultimately does not matter whether Officer recklessly or knowingly and intentionally included a falsehood in the affidavit.

Next, Defendant argued that a new trial was required because the prosecutor failed to provide evidence of defendant's prior OWI convictions at trial. The Court of Appeals disagreed.

The Court held that trial court correctly held that the prosecutor was not required to provide evidence of defendant's prior OWI convictions at trial. Rather, in order

to "seek an enhanced sentence based upon the defendant having 1 or more prior convictions," the prosecutor was required to "include on the complaint and information . . . a statement listing the defendant's prior convictions." MCL 257.625(15).

Then, the prosecutor must "establish[] *at sentencing*" each prior conviction using one or more types of documentation, including a "copy of the defendant's driving record" or "information contained in a presentence report." MCL 257.625(17)(e), (f) (emphasis added). *Weatherholt*, 214 Mich App at 512, thus held that the subsections of MCL 257.625 relevant to habitual OWI offenses "establish only a sentence enhancement scheme"; therefore, a "defendant is not entitled to a jury trial on the issue of his prior convictions."

The Michigan Supreme Court favorably cited *Weatherholt* for this proposition in *People v Reichenbach*, 459 Mich 109, 127 n 19; 587 NW2d 1 (1998), noting that in the OWI context, *Weatherholt* "correctly observed" that "prior convictions are not elements of the offense." Affirmed.

People v. Dangerfield, No. 295371 (Mich App, April 21, 2011):

The defendant appealed as of right from his jury convictions of operating a vehicle while intoxicated, third offense, MCL 257.625(1)(9)(c), and driving while license suspended, MCL 257.904(3)(a). On appeal, defendant challenged the trial court's denial of his motion to suppress evidence obtained as a result of the initial stop of defendant's vehicle.

The defendant brought a motion to suppress the evidence obtained as a result of the stop on the grounds that the police lacked probable cause to stop his vehicle. The trial court also concluded that the two illuminated head lamps were not emitting white light, as required by MCL 257.685(1); MCL 257.699(a). The trial court concluded that the officer had probable cause to effectuate the stop.

The Court of Appeals agreed with the trial court. The Court stated that "At the time that the officer effectuated his stop of defendant's vehicle, the evidence presented in this matter leads us to conclude that he had a reasonable belief, based on objective and verifiable evidence, that there existed a significant difference in the illumination of the two head lamps on defendant's Jeep Cherokee."

Therefore, the concluded that "Based on the officer's reasonable suspicion to initiate an investigative stop based on his belief that defendant was violating the Motor Vehicle Code, the stop was additionally permissible under MCL 257.683(2)."

The court affirmed the trial court's decision denying the defendant's motion to suppress.

People v. Rufus Washington, No. 295719 (Mich App, April 12, 2011):

Defendant argued that the prosecution failed to establish factors three (authorized medical personnel), four (sterile instruments used), and five (sample properly kept or preserved), contending that only the phlebotomist who drew his blood could provide testimony to satisfy those criteria. He argued on appeal, that the trial court improperly admitted his BAC test results because the prosecution failed to establish a sufficient foundation for the admission of the results.

The Court of Appeals disagreed. The Court stated that the previous cases laying out the foundational criteria did not create an "inelastic rule requiring that compliance with the initial six criteria be established through the testimony of a physician or nurse."

The Court noted that the testimony of the forensic technician and the officer established "that the phlebotomist used a factory-sealed, state-issued kit equipped with all the items necessary for a proper blood draw. The kit's paperwork identified the person who performed the draw, the location of the draw, and the identity of the officer who observed the draw. Once the draw was completed, the kit was resealed and transported to the lab where it was immediately put into proper storage."

Therefore, the Court held that while the phlebotomist did not testify, the trial testimony was sufficient to insure that the blood tested was defendant's blood and that the sample was reliable. The Court also rejected defendant's claims that the trial court erred by denying his request for an adverse inference jury instruction and that failing to call the phlebotomist at trial violated his Confrontation Clause rights.

People v. Swanigan, No. 294898 (Mich App, February 8, 2011) lv den 489 Mich 976; 799 NW2d 1 (2011):

Defendant appealed as of right his jury trial conviction for possession of a controlled substance less than 25 grams. Defendant was sentenced to 24 to 180 months imprisonment

The issue in this case came from the search of a vehicle in which Defendant was a back seat passenger. Specifically, the vehicle was pulled over by the police for a lane violation and loud exhaust. Once pulled over, the 14-year old-driver had no driver's license, so all occupants were asked to exit the vehicle. A search of the vehicle's interior was then conducted, where the police located an unmarked bottle of Vicodin in the back pocket of the passenger seat.

Defendant argued his Fourth Amendment rights were violated when the police searched the car in which he was a passenger and found the Vicodin. The Court of Appeals disagreed.

The Court ruled that the Defendant had failed had failed to assert a property or possessory interest in the car that was searched or in the Vicodin found in the car. *Smith*, 106 Mich App at 209; *Carey*, 110 Mich App at 193-194. The Court noted that

the fact that Defendant was lawfully in the car does "not endow him with a reasonable expectation of privacy in the area searched. Defendant, thus, lacks standing to attack the search and seizure." *Smith*, 106 Mich App at 209. Defendant has not carried his burden of establishing standing by demonstrating a reasonable expectation of privacy. *Brown*, 279 Mich App at 130; *Smith*, 420 Mich at 21.

People v. Militello, No. 295104 (Mich App, February 1, 2011):

The Defendant in this case was pulled over due to a loud exhaust. He was subsequently arrested for furnishing false information to a police officer, warrants, and drug charges.

The Court noted two key points in its decision. First, motorcycles fall under the same noise limitations as other motor vehicles. Second, police officers may initiate traffic stops based upon "reasonable suspicion" of a violation. Such reasonable suspicion may be based on the officer's subjective, articulable observations.

Therefore, an officer may need objective and scientific evidence of a vehicle's noise level in order to issue a citation, but such scientific evidence is not required to initiate the traffic stop.

People v. Bain, No. 294985 (Mich. App., January 20, 2011) lv den 490 Mich 858; 802 NW2d 60 (2011):

The Court ruled that the OWI forfeiture statue, MCL 257.625n, does not violate the prohibition against double jeopardy.

In this case, the defendant was arrested for OWI - Third Offense. The prosecutor initiated forfeiture proceedings on the defendant's vehicle, but the prosecutor agreed to return the vehicle to the vehicle in exchange for an $1,800 payment. The trial court ruled that any punishment beyond the $1,800 payment would violate the double jeopardy clause.

The appellate court reversed, stating, "[T]here is no violation of the 'multiple punishments' strand of double jeopardy because the Legislature clearly intended to impose multiple punishments."

In making this determination, Court cited MCL 257.625n:

"(1) Except as otherwise provided in this section and in addition to any other penalty provided for in this act, the judgment of sentence for a
conviction for a violation of section 625(1) described in section 625(9)(b) or (c) . . . may require 1 of the following with regard to the vehicle used
in the offense if the defendant owns the vehicle in whole or in part or leases the vehicle:

(a) Forfeiture of the vehicle if the defendant owns the vehicle in whole or in part."

People v. Druzynski, No. 289521 (Mich App, July 20, 2010) lv den 488 Mich 1054; 797 NW2d 617 (2011):

After a jury trial, Defendant Frank Michael Druzynski was convicted of one count of operating a vehicle while intoxicated (OUIL) causing death, MCL 257.625(4)(a), and one count of operating a vehicle while intoxicated (OUIL) causing serious injury, MCL 257.625(5). He was sentenced to concurrent terms of 7 to 15 years' imprisonment for the OUIL causing death Conviction and two to five years' imprisonment for the OUIL causing serious injury conviction.

Defendant's convictions arise from a November 2006 automobile crash in which his vehicle collided with a vehicle occupied by Richard and Ruth Ann Johnson. The crash occurred when Defendant attempted to make a left turn at an intersection and drove into the path of the Johnsons' vehicle as it was proceeding through the intersection. Both Richard and Ruth Ann were injured in the crash, and Ruth Ann later died from her injuries.

Defendant had a blood-alcohol level of .25 grams of alcohol per 100 milliliters of blood. At trial, the prosecution moved to introduce at trial that the Defendant was involved in two other alcohol-related driving incidents during the previous year, one in November 2005 when he struck a tree, and another in January 2006 when he struck a parked car in a parking lot. The Circuit Court allowed the Prosecutor
to admit the prior-alcohol related crashes.

Citing *People v VanderVliet*, 444 Mich 52, 74-75; 508 NW2d 114 (1993), the Court of Appeals agreed with the trial court that the prosecutor had the right to present the evidence and allow the jury to consider the facts and circumstances surrounding the prior incidents to determine what weight to afford that evidence.

The Court of Appeals stated in pertinent part, that "The evidence of Defendant's prior alcohol-related driving incidents was offered to show that Defendant knew that his consumption of alcohol might impair his ability to safely operate a vehicle. Further, the evidence that Defendant had been involved in two prior alcohol-related driving accidents during the previous year made it more probable that, with respect to the current offense, Defendant knew that he might be intoxicated when he voluntarily decided to drive his vehicle after consuming a bottle of rum."

Further, the Court noted that "The prior incidents were highly probative of Defendant's knowledge that a similar event might occur if he again drove a vehicle after consuming an intoxicating agent."

Therefore, the trial court did not abuse its discretion in admitting evidence of the prior incidents.

People v. Joye, No. 291273 (Mich App, June 22, 2010):

An eyewitness testified she was in line on the highway preparing to turn into the entrance for the ferry. When the ferry arrived a few cars moved forward, but the cars in front of her were going around a red pickup truck in the "lane of travel." The driver of the truck appeared to be hunched over inside. The witness passed the driver at a "very slow idle" and could not determine the driver's condition. She called 911 from her cell phone and proceeded to drive her car around the truck and onto the ferry.

Defendant essentially admitted he was intoxicated when the officers found him. However, he maintained in response to a practical joke he had played on another individual earlier in the evening, others placed him - inebriated and unconscious - in the running truck. He awoke when the officer knocked on the window with no idea what happened.

The Defendant claimed the prosecution presented insufficient evidence to allow a reasonable trier of fact to conclude he had "operated" the vehicle, because his truck was not in motion and was in park when the law enforcement officers arrived, and there was no evidence he had operated the vehicle. The witness testified she was in line at the ferry when she saw Defendant hunched over in the truck, alone. The officer testified he was alone, in the driver's seat, with the engine running, when he found him a few minutes later.

The Court noted that this testimony, if believed, supported a reasonable inference Defendant had driven the truck, and parked it in the right lane of traffic while waiting for the ferry, before passing out. Further, this testimony also supported a finding he put his car in a position posing significant risk of collision, and had not yet returned it to a position of safety. A rational trier of fact could have concluded, beyond a reasonable doubt, Defendant operated the vehicle, drove it to wait in the ferry line, put it in park and fell asleep.

Therefore, the Court ruled that there was sufficient evidence to allow the jury to find the Defendant was operating the vehicle to support his conviction for OUIL.

Affirmed.

People v. Blow, No. 288781 (Mich App, December 22, 2009):

The Defendant faced charges of operating while intoxicated, MCL 257.625(1), third offense, MCL 257.625(9). The Wayne County Prosecuting Attorney's Office appealed by leave granted an order suppressing the results of Datamaster breathalyzer tests. The Court of Appeals reversed.

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At approximately 2:00 a.m., in August 2007, Defendant was driving home when Officer Curtis Johns observed him speeding 20 miles per hour above the speed limit. Officer Johns followed Defendant and pulled him over after seeing him cross the center line. Following the field sobriety tests, Defendant pleaded with Officer Johns to let him go because an arrest would ruin his career and he was only a mile away from home. Not persuaded, Officer Johns administered a Preliminary Breath Test (PBT). Defendant's PBT result was 0.17. Officer Johns arrested Defendant for operating a vehicle under the influence of liquor and transported him to the police station. They arrived at approximately 2:17:47 a.m., and the parties agreed that Defendant was seated in the booking room by 2:18:24 a.m. Defendant remained in Officer Johns' presence until 2:45:28 a.m., when Officer Johns administered the first Datamaster test. The first test registered 0.17 Blood Alcohol Content (BAC). Two minutes later, Officer Johns administered the second test, which registered 0.18 BAC.

The Defendant moved to suppress arguing that there was no probable cause for the arrest and that the administrative procedures for conducting the DataMaster test were not followed.

The prosecution, argued that even without the PBT result, there was probable cause to make the arrest. Regarding the Datamaster test at the police station, the prosecution argued that any technical violations of the administrative rule requiring a 15-minute observation period before using the Datamaster were not substantial enough to warrant suppressing the results.

The court of appeals agreed with the prosecutor and held that viewing all of the evidence available to the officer at the time of the arrest, there were enough facts and circumstances present such that a fair-minded person with average intelligence could conclude that there was a substantial chance that Defendant was driving while intoxicated.

As to the next issue, the court of appeals held that the accuracy of the first test cannot be seriously questioned. The court noted that Defendant was handcuffed behind his back for more than one minute and 25 seconds before the observation period arguably started. Therefore, he could not have placed anything in his mouth during this time. Moreover, there is no evidence that Defendant regurgitated during this small window, and no evidence that he regurgitated or placed anything in his mouth throughout the observation period. Second, a subsequent Datamaster test was administered at 2:47:46 a.m.

Because it occurred 15 minutes and 53 seconds after the time Defendant argued the observation period began, the court stated it complied with the 15-minute observation period requirement. Again, the first test yielded a 0.17 BAC result and the second test yielded a 0.18 BAC result. Thus, the accuracy of the allegedly "compromised" first test cannot be seriously called into question, since it is bolstered by the result of the second test.

The case was reversed and remanded.

People v. Kulpa, No. 285892 (Mich. App., December 1, 2009):

The Defendant was convicted of OWI, DWLS, and furnishing false information to a police officer. Defendant was sentenced as an habitual offender, fourth offense, to concurrent terms of 1 to 8 years' imprisonment.

The Defendant argued the totality of the circumstances surrounding his traffic stop resulted in his being in custody and Miranda warnings were necessary. *Miranda* warnings are not required unless an individual is subjected to custodial interrogation. In *Berkemer v. McCarty,* 468 US 420 (1984), the United States Supreme Court held that a police officer briefly detaining a Defendant and asking him a number of questions could not fairly be characterized as the functional equivalent of formal arrest.

The Court of Appeals following the rationale of *Berkemer,* ruled that the Defendant did not produce any evidence showing his detention at the scene, prior to his arrest, was not brief or he was asked an unreasonable number of questions, which would cause a reasonable person to feel he was not free to leave.

While the arresting officer testified from the time he pulled Defendant's vehicle over to the time he finished his work with him at the jail, two and a half to three hours passed, there was no evidence as to the amount of time between the initial stop and the questions the officer posed at the scene. The two and a half to three-hour timeframe included the roadside investigation, taking Defendant to a local hospital to have his blood drawn, transporting him to the county jail, and the booking process.

From the testimony, the roadside questioning occurred shortly Defendant's vehicle was stopped. Further, the officer's questions were only related to Defendant's identity and whether he had been drinking. Therefore, the court held that the temporary detainment under circumstances giving rise to the officer's suspicions Defendant had been drinking did not result in Defendant being "in custody" for purposes of *Miranda.* Lastly, the court noted while he was briefly placed in the back of the patrol car before he was actually arrested, he was not handcuffed and he was allowed the exit the patrol car to urinate.

The case was affirmed.

People v. Hogan, No. 285492 (Mich. App., November 19, 2009):

Defendant appeals by right from her convictions, following a jury trial, of three counts of operating a motor vehicle while visibly impaired (OWVI) causing death, MCL 257.625(4), and one count of OWVI causing serious impairment of body function, MCL 257.625(5).

Defendant's conviction arose out of an evening collision between Defendant's pickup truck and a Chevrolet Trailblazer on March 23, 2007. The evidence established that Defendant ran a stop sign and crashed into the Trailblazer at the intersection of Harrison

and Luce Roads in Gratiot County. As a result of the collision, three of the five occupants in the Trailblazer were killed and a fourth occupant sustained a fractured skull. Defendant contended at trial that she failed to stop at the stop sign because deer on the roadway had distracted her.

The People argued contended that Defendant's ability to drive was visibly impaired due to the consumption of alcohol earlier that evening. The jury found that the evidence supported plaintiff's contention and convicted Defendant as charged.
Defendant argues that plaintiff failed to present sufficient evidence of visible impairment.

The Court disagreed and held that held that based on the established facts and circumstantial evidence, the jury could have reasonably inferred that Defendant's ability to drive her vehicle was visibly impaired, i.e., that it was reduced to the point where an ordinary, observant person would have noticed it. Therefore, the prosecutor introduced sufficient evidence to establish that Defendant's ability to operate her vehicle was visibly impaired.

Defendant also argued that the trial court erred in admitting the expert testimony of toxicologist Michele Glinn, Ph.D. Dr. Glinn used retrograde extrapolation to calculate Defendant's BAC content at the time of the collision. Defendant maintained that the factual basis for the calculation was deficient and that as such the trial court should have excluded Dr. Glinn's testimony. The Court found that Defendant's challenges to Dr. Glinn's testimony address the weight of the retrograde extrapolation evidence, not its admissibility.

The case was affirmed.

People v. Person, No. 286057 (Mich. App., November 19, 2009) lv den 486 Mich 902; 780 NW2d 795 (2010):

Defendant appealed as of right his jury conviction of second-degree murder, and OWI causing death. The trial court sentenced the Defendant to concurrent terms of 15 to 30 years in prison on each charge.

On July 19, 2007, the Defendant, Roderick Person, and Victor Gornall, Jr., went to a bar in Alpena at approximately 2:00 a.m. Person and Gornall had been drinking at Person's home before arriving at the bar. Person persistently asked the bartender for a drink, but was not served any alcohol at the bar because he arrived after last call.

Jean Anderson, Person's neighbor was also a patron of the bar that night. Anderson had walked to the bar, so Person offered her a ride home when the bar closed, and she accepted. Gornall was passed out in the back seat of Person's car. Alpena Police Department Officer William Gohl, who was on duty that night in a marked patrol car, observed Person's vehicle after it left the bar and noticed that it had a burnt out passenger side headlight.

After Officer Gohl observed other violations, he activated his overhead lights. The Defendant's vehicle continued without stopping and caught up with another vehicle, then abruptly changed lanes and passed it. Officer Gohl turned on his siren and alerted dispatch that he was following a fleeing vehicle. As the Defendant's vehicle entered a curve in the road, Officer Gohl saw its brake lights briefly and then could no longer see the vehicle. Officer Gohl discovered that Person's vehicle had left the roadway. As a result of the crash, Grohl was deceased.

The investigation revealed that the Defendant's BAC was 0.17 grams of alcohol per 100 milliliters of blood. The Defendant's speed at the time of the crash was 87 mph. The Defendant argued that there was insufficient evidence to support his conviction for second-degree murder.

The court disagreed. The court noted that the evidence at trial established that Defendant's BAC level at the time of the accident was 0.17 grams per 100 milliliters—more than twice the legal limit. In addition, the court noted that the Defendant was traveling at excessively high rate of speed, and that this rate of speed is especially egregious.

Therefore, the court held that viewed in a light most favorable to the prosecution, the evidence and the reasonable inferences stemming from that evidence was sufficient to support Defendant's convictions.

The case was affirmed, but the court vacated the Defendant's sentence on his conviction for OWI causing death and remanded for re-sentencing.

People v. Phillips, No. 280631 (Mich. App., November 3, 2009):

The Prosecutor appealed as of right from the circuit court's decision to suppress evidence found by police in a search of Defendant's vehicle and to dismiss the charge of possession with intent to deliver "Ecstasy."

A Michigan State Police trooper stopped Defendant's vehicle because it had two air fresheners hanging from the rearview mirror in violation of MCL 257.709(1)(c). The trooper determined that Defendant's two passengers had outstanding warrants and they were placed under arrest. He then conducted a search of the vehicle incident to the arrests. In a hidden compartment, he found a white athletic sock containing ten clear baggies with 906 multi-colored pills of Ecstasy.

Defendant's vehicle was licensed in Ohio and he pointed out that the statute contained an express exemption precluding its application to vehicles registered in another state. MCL 257.709(3)(d). Defendant also cited an unpublished federal case, *United States v Acuna-Payan*, States District Court for the Western District of Michigan, issued May 23, 2006 (Docket No. 1:05-CR-291), that held that the police lacked probable cause to stop an out-of-state vehicle with a crucifix hanging from the rearview mirror. Defendant argued that the police were not justified in stopping every out-of-state vehicle they observed with

some ornament obscuring a portion of the windshield merely to confirm that the vehicle was validly registered.

The court of appeals agreed. The court stated the stop of a motor vehicle must be based on reasonable suspicion that the driver or the passenger(s) are involved in criminal activity. The court noted the trooper's only reason for stopping Defendant's vehicle was his observation that it had two air fresheners hanging from the rear view mirror.

Therefore, the court held that the statutory exemption clearly applied and served to invalidate the vehicle stop, and thus, there was no basis to support the stop of Defendant's vehicle.

The case was affirmed.

People v. Morrison, No. 284218 (Mich. App., August 6, 2009) lv den 485 Mich 1011; 775 NW2d 775 (2009):

The Defendant was convicted of two counts of involuntary manslaughter with a motor vehicle and one count of felonious driving. The vehicle driven by the Defendant collided with another vehicle with three occupants, killing two and seriously injuring the third. Two witnesses saw Defendant's car traveling at high rates of speed on the day of the crash. The driver of another vehicle saw Defendant's car "traveling kind of recklessly or at a high rate of speed," estimating it was going 60 to 65 mph in a 55 mph zone.

An off-duty sheriff's deputy saw Defendant's car drive by his home twice at high rates of speed, exceeding 90 mph. He was so concerned he tried to follow Defendant's car, and he arrived at the crash scene four or five minutes after seeing the car pass his home the second time. Defendant's passengers testified the car ride only lasted 10 to 15 minutes.

The Defendant argued that the testimony presented at trial by witnesses concerning the Defendant's vehicle traveling well beyond the speed limit was reversible error because such testimony constituted prior bad acts in contravention of Michigan Rules of Evidence 404(b). The court of appeals disagreed.

The court stated that the witnesses, as lay witnesses, were competent to testify about their opinions concerning the speed of Defendant's car. The Defendant's conduct was relevant to one of the elements of the charged offense of involuntary manslaughter, i.e. whether his conduct constituted ordinary negligence or gross negligence. The jury was entitled to have facts about Defendant's driving on another road "as an integral part of the events that ultimately played out minutes later at the intersection" where the crash occurred.

The Court of Appeals held that the trial court did not abuse its discretion in admitting the two witnesses' testimony about Defendant's driving on the other road. The Defendant offered no evidence to show otherwise that the prior bad acts contravened Michigan Rules of Evidence 404(b).

The case was affirmed.

People v. Bacon, No. 282923 (Mich. App., May 21, 2009) lv den 485 Mich 929; 773 NW2d 690 (2009):

A traffic crash occurred between Defendant and another driver. The passenger front end of Defendant's vehicle hit the rear driver's side of the other vehicle. Dr. Michele Glinn, Supervisor of the Toxicology unit of the Michigan State Police Crime Laboratory, was qualified as an expert and testified using retrograde extrapolation, Defendant's blood alcohol level at the time of the crash would have been somewhere between .05 and .12.

She also tested Defendant's blood for drugs. The results showed therapeutic levels of alprazolan (Xanax), diazepam (Valium), a prescription muscle relaxant, and codeine. The record revealed Dr. Glinn based her testimony on facts presented by the prosecutor regarding the crash including Defendant's behavior at the scene, as well as the results from his blood test. Dr. Glinn gave her expert opinion Defendant was under the influence of drugs. Although her testimony embraced the ultimate issue to be decided, she did not provide an opinion on Defendant's guilt. Though Dr. Glinn stated in her opinion Defendant was under the influence as a legal concept, she did not define the phrase "under the influence."

The Defendant relied on the court's opinion in *People v Lyons,* 93 Mich App 35 (1979), Lyons to support his argument Dr. Glinn's testimony went beyond merely embracing the ultimate issue to be tried because it usurped the role of the jury and was opinion testimony of his guilt.

The Court held that was easily distinguishable from *Lyons.* In *Lyons,* a prosecution expert defined what qualified as a security under the Uniform Securities Act even though the trial court disagreed with the witness's interpretation. The court vacated the Defendant's conviction in *Lyons.* Here, unlike *Lyons,* Dr. Glinn did not provide a definition for "under the influence." Rather, she provided her expert opinion based on hypothetical information provided by the prosecutor and the blood test results.

The case was affirmed.

People v. Dean, No. 283728 (Mich. App., April 23, 2009):

Defendant was found miles away from the crash scene, asleep in a different car. When officers arrived at the scene of the single vehicle rollover accident, there was no one at the scene. The officers performed an inventory of the interior of the truck involved in the crash. They found Defendant's wallet as well as other documents belonging to him. A license plate check revealed the truck belonged to another individual.

This other individual told the officers Defendant had a set of keys to the truck and had been keeping the truck at his parents' home for the past several days. When she was

advised the truck had been in a crash, she went to the home of the Defendant's parents and found the Defendant asleep in a car.

Police were dispatched and they found the Defendant to be intoxicated. He had fresh scratches and cuts on his person and also had broken glass in his vest pockets similar to the glass found at the scene of the crash. Defendant's statement to police officers, denying he had been involved in a crash, contradicted his later claim another person was driving at the time of the accident.

The court of appeals ruled that viewed in a light most favorable to the prosecution, the circumstantial evidence supported the Defendant's convictions for OWI, third offense and operating a vehicle on a suspended license, second offense. The case was affirmed.

People v. Burruss, No. 281039 (Mich. App., November 18, 2008):

The Defendant was charged with possession with intent to deliver 50 or more but less than 450 grams of cocaine. The drugs were seized from the Defendant's vehicle following a traffic stop. The Defendant moved to suppress the evidence, challenging the validity of the stop. The trial court granted the motion and dismissed the charges. The People appealed.

Under the law, a person is prohibited from driving a vehicle with "a dangling ornament or other suspended object that obstructs the vision of the driver of the vehicle, except as authorized by law." MCL 257.709(1)(c). The Court of Appeals stated the officer had reasonable suspicion to believe that Defendant's vehicle was in violation of the afore-mentioned statute; he observed two air fresheners dangling from the rearview mirror. However, vehicles registered in another state are not subjected to this provision of the statute. MCL 257.903(3)(d).

The court held there was no evidence that the officer had any reason to believe that the displayed license plate was invalid. He did not run a LIEN check before he initiated the stop, and he did not identify any other defect or irregularity suggesting the plate was not valid.

Therefore, the dangling ornaments did not create reasonable suspicion for stopping a vehicle registered in another state, and the trial court did not err in granting the Defendant's motion to suppress.

People v. Bain, No. 268527 (Mich. App., June 21, 2007):

Following a traffic stop, Defendant was arrested for driving with an unlawful breath alcohol level. He was transported to the police department and administered two DataMaster breath-alcohol tests. The results showed that the Defendant had 0.19 grams of alcohol per 210 liters of breath. Defendant thereafter filed a motion to quash the information and suppress the evidence of the breath-alcohol test results.

After an evidentiary hearing the trial court granted the motion to suppress. On appeal, the prosecution argued that a proper foundation to admit the Datamaster test results did not require expert testimony. **The Court of Appeals agreed with the prosecution that it was not required to offer expert testimony to admit the breath-alcohol test results.**

MICHIGAN ATTORNEY GENERAL'S OPINION

Attorney General Opinion 7237, released November 10, 2009: The Alger County Prosecuting Attorney requested an opinion from the Attorney General as to whether, under subsection (6)(e) of section 625a of the Michigan Vehicle Code, MCL 257.625a(6)(e), an actual criminal prosecution must be pending before a prosecutor may obtained the results of blood alcohol tests taken by a medical facility in the course of providing medical treatment to a driver involved in a motor vehicle accident.

MCL 257.625a(6)(e) addresses how various chemical tests taken in connection with providing medical treatment to one involved in a motor vehicle accident may be used:

(6) The following provisions apply with respect to chemical tests and analysis of a person's blood, urine, or breath, other than preliminary chemical breath analysis:
* * *
(e) If, after an accident, the driver of a vehicle involved in the accident is transported to a medical facility and a sample of the driver's blood is withdrawn at that time for medical treatment, the results of a chemical analysis of that sample are admissible in any civil or criminal proceedings to show the amount of alcohol or presence of a controlled substance or both in the person's blood at the time alleged, regardless of whether the person had been offered or had refused a chemical test. *The medical facility or person performing the chemical analysis shall disclose the results of the analysis to a prosecuting attorney who requests the results for use in a criminal prosecution as provided in this subdivision*. A medical facility or person disclosing information in compliance with this subsection is not civilly or criminally liable for making the disclosure. [Emphasis added.]

The Attorney General opined that "under subsection (6)(e) of section 625a of the Michigan Vehicle Code, MCL 257.625a(6)(e), an actual criminal prosecution need not be pending before a prosecutor may obtain the results of blood alcohol tests taken by a medical facility in the course of providing medical treatment to a driver involved in a motor vehicle accident."

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