STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellant,

V

DAVID ALAN RICHARDSON,

Defendant-Appellee.

UNPUBLISHED
November 26, 2002

No. 241975
Livingston Circuit Court
LC No. 01-012343-FH

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellant,

V

STEVEN CHARLES OLIVER,

Defendant-Appellee.

No. 241976
Livingston Circuit Court
LC No. 01-012355-FH

Before: Whitbeck, C.J., and Hood and Kelly, JJ.

PER CURIAM.

The prosecution appeals by leave granted from the trial court's order granting defendants' motion to suppress.[1] We reverse.

In the early morning hours of January 1, 2001, Mark Gordon Tangney was driving his Chevy pickup truck with passenger Bridget Mae Talbot. Talbot testified that defendant Richardson was driving a Dodge Caravan that crossed into their lane of traffic. Tangney swerved to avoid a collision, but the passenger side of each vehicle was extensively damaged. Talbot and defendant were taken to the hospital as a result of injuries suffered in the accident.

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[1] We denied the application for leave to appeal by order dated February 26, 2002. However, the Supreme Court remanded the case for our review as on leave granted for consideration in light of *Arizona v Youngblood*, 488 US 51; 109 S Ct 333; 102 L Ed 2d 281 (1988) and *People v Sobczak-Obetts*, 463 Mich 687; 625 NW2d 764 (2001). *People v Richardson*, 466 Mich 877 (2002).

Defendant reported to deputy sheriff Eric Sanborn that he had consumed alcohol at a rock concert that he had attended that evening. The smell of intoxicants was noticeable to both Sanborn and Talbot. Talbot reported that the paramedics opened the ambulance windows because of the strong smell. Sanborn also noted defendant's appearance. Nonetheless, Sanborn prepared an affidavit and obtained a search warrant for a blood sample. Test results revealed a blood alcohol level of 0.14.

Defense counsel made various oral and written requests for preservation of the blood sample to different members of the prosecutor's office, but did not contact the laboratory directly. A prosecutor did send correspondence to the laboratory for preservation of the blood sample, but it had been destroyed approximately three weeks prior to receipt of the letter. Defendant moved for suppression of the blood test results, essentially alleging prosecutorial misconduct and discovery violations. The prosecutor requested an evidentiary hearing to determine whether the evidence was exculpatory and whether the police acted in bad faith. The trial court granted the motion to suppress, stating the destruction of the evidence precluded any evaluation of the nature of the evidence. Although the factual circumstances regarding the blood sample taken from defendant Oliver were not delineated, the parties agreed that suppression of the blood test results was equally applicable to his case in light of the trial court's ruling.

The prosecutor alleges that the trial court erred in suppressing the blood alcohol test results. We agree. A trial court's ruling regarding a motion to suppress is reviewed for clear error. *People v Sobczak-Obetts*, 463 Mich 687, 694; 625 NW2d 764 (2001). However, questions of law regarding the suppression issue are reviewed de novo. *Id*. Failure to preserve potentially useful evidence does not constitute a denial of due process of law unless a criminal defendant can demonstrate bad faith. *Arizona v Youngblood*, 488 US 51, 58; 109 S Ct 333; 102 L Ed 2d 281 (1988). Based on the record available, defendants failed to meet this burden. Additionally, the requirement that property seized be safely kept for trial, MCL 780.655, does not pertain to blood samples. *People v Jagotka*, 461 Mich 274, 279; 622 NW2d 57 (1999).[2] Furthermore, even if there had been a violation of MCL 780.655, our Supreme Court has ruled that the suppression of evidence is not an appropriate remedy for a statutory violation of this nature. *Sobczak-Obetts, supra*. Accordingly, the trial court erred in suppressing the evidence in these cases.

Reversed.

/s/ William C. Whitbeck
/s/ Harold Hood
/s/ Kirsten Frank Kelly

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[2] Although essentially a three-to-two decision because one justice did not participate and one justice concurred in the result only, nonetheless, the decision is binding. See *Negri v Slotkin*, 397 Mich 105, 109-110; 244 NW2d 98 (1976).