

## MSC Opinion: People v Feezel

11. June 2010 By Julie Lam

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On a dark and stormy night, the victim was walking with his back to oncoming traffic in the middle of the road instead of a nearby sidewalk. The victim was severely intoxicated with a blood alcohol content (BAC) of at least 0.268. Around 2:00 a.m., Defendant hit the victim with his car, and the victim was killed. Defendant initially left the scene of the accident, but later returned and was arrested. At the time of the accident, Defendant's BAC was an estimated 0.091 to 0.115. Defendant's blood also contained amounts of 11-carboxy-tetrahydrocannabinol (11-carboxy-THC), a byproduct the body produces as it metabolizes the main psychoactive substance found in marijuana. After a jury trial, Defendant was convicted of failure to stop at the scene of an accident that resulted in death, MCL 257.617(3), operating while intoxicated (OWI), second offense, MCL 257.625(1), and operating a motor vehicle with the presence of a schedule 1 controlled substance in his body, causing death, MCL 257.625(4) and (8). On June 8, 2010, the Michigan Supreme Court published its opinion in [People v Feezel, No. 138031](#), in which it reversed the judgment of the Court of Appeals, vacated Defendant's convictions, and remanded the case to the trial court. The Michigan Supreme Court concluded that under some circumstances, evidence of a victim's intoxication may be relevant and admissible to show the victim's gross negligence. The Michigan Supreme Court held that here the trial court abused its discretion in suppressing evidence related to the victim's intoxication because it was relevant to the element of causation in certain crimes Defendant was charged with. The Michigan Supreme Court determined that the trial court's error resulted in a miscarriage of justice and required reversal under MCL 769.26.

In addition, a majority of the justices (Cavanagh, Kelly, Hathaway, and Weaver) determined that 11-carboxy-THC is not a schedule 1 controlled substance under MCL 333.7212 of the Public Health Code and overruled *People v Derror*, 475 Mich 316 (2006), which held the opposite. Under *Derror*, a person who operates a motor vehicle with the presence of any amount of 11-carboxy-THC in his or her system violates MCL 257.625(8). Justice Weaver concurred and joined in Justice Cavanagh's opinion, with limited exceptions. Justice Young, joined by Justices Corrigan and Markman, authored an opinion concurring in part and dissenting in part. Justice Young dissented from the decision to overturn *Derror* under the doctrine of *stare decisis* because *Derror* was not wrongly decided and other relevant factors exist that caution against overruling *Derror*. Justice Young opined that the conclusion that 11-carboxy-THC is not a derivative of marijuana under Michigan's controlled substance laws conflicts with legislative intent. Moreover, Justice Young emphasized that there was no need to reach this conclusion because Defendant had trace amounts of actual tetrahydrocannabinol in his system.