STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF GRAND TRAVERSE

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff/Appellee,

v

Circuit Court File No. 99-7817-AR
District Court File No. 98-9120-SD
HON. PHILIP E. RODGERS, JR.

MERRY LYNN COLLIER,

Defendant/Appellant.
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Dennis M. LaBelle (P24091)
Prosecuting Attorney
Attorney for Plaintiff/Appellee

Cheryl Gore Follette (P41102)
Attorney for Defendant/Appellant

DECISION AND ORDER

This case comes before the Court following a conditional plea of guilty to operating while under the influence of intoxicating liquor in the District Court. The condition associated with the Defendant's guilty plea was that she be allowed to appeal the District Court's determination that the area where she was arrested was "generally accessible to motor vehicles" and therefore subject to the OUIL statute. The Court had the opportunity to review the parties' briefs and entertained their oral arguments on May 21, 1999. The Court took the matter under advisement. The Court will now provide its legal conclusions. MCR 2.517.

The factual record was essentially agreed to by the parties. Transcript, p 8. The following concise factual description is contained within the police report attached as an exhibit to the Appellant's brief:

> TRAFFIC STOP:
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> While on patrol, undersigned officer observed a fresh set of tire impressions in the fresh snow that left Lake Street in an eastbound manner behind several closed

> businesses. As undersigned officer investigated, a white Ford pickup truck was observed stationary behind the closed businesses. As undersigned officer approached the white vehicle, officer observed that the vehicle was running and had an occupant in the driver's seat. As officer almost approached the suspect vehicle with the patrol vehicle, the suspect vehicle then turned on its lights and began moving in an eastbound manner. With the recent B&E's of businesses in the Traverse City city limits, officer activated the overhead light to obtain the occupant's information in case some of the local businesses had been B&E'd. The suspect vehicle traveled approximately 35 feet and then came to a stop. The vehicle stopped just east of the old train station that had burned down within the last several years. It should also be noted that there are signs posted in the general area advising that there is no trespassing on the private property. Police report, pp 3 and 4.

At the hearing on the motion to suppress, the arresting officer further described the road as "a private drive, it's a gravel road, it's not maintained by the city or the county, but it's actually made of gravel, it's like a driveway, and it goes behind the businesses here and it provides not only parking for the business, but it's the entry way to the railroad tracks in the back." Transcript, p 6.

In this appeal, the Defendant accepts the officer's characterization of the road as a private driveway located on private property which is posted with no trespassing signs. The Defendant further accepts that the circumstances surrounding the Defendant's presence on the driveway did substantiate probable cause for an investigatory stop and the ultimate arrest for drunk driving.

The sole legal issue raised by the Defendant recognizes the private character of the property and argues that it is not "generally accessible to motor vehicles" and therefore not subject to the OUIL statute.[1] Both parties cite *People v Nickerson*, 227 Mich App 434; 575 NW2d 804 (1998) in support of their respective positions. Indeed, *Nickerson* is the only case which has been provided to this Court which interprets the phrase "generally accessible to motor vehicles" in the OUIL statute. After reciting the general rules of statutory construction, the *Nickerson* Court held that the phrases "open to the general public" and "generally accessible to motor vehicles" were disjunctive and

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[1]The relevant portion of the OUIL statute provides that an intoxicated driver . . . "shall not operate a vehicle upon a highway or other place open to the general public or generally accessible to motor vehicles, including an area designated for the parking of vehicles . . ." MCL 257.625(1); MSA 9.2325(1).

specified "two distinct alternative places other than highways where driving a vehicle while under the influence of liquor of prohibited." *Id.*, p 440.

In interpreting this same language, the District Court Judge reached the same conclusion and opined as follows:

> . . . It seems to me accessible means physically accessible, open to the public means legally accessible, generally accessible is obviously something other than -- than open to the public. Open to the public means that the public is generally welcome there, allowed to go there, it seems to me that generally accessible to motor vehicles, we're now talking about the ability of a motor vehicle to access that area legally or not . . . On the face of it, it would seem to me that the intent of the legislature was to extend the crime of drunk driving to any place where a motor vehicle generally can go . . . Transcript, p 13.

For purposes of this discussion, the parties agreed that the private gravel driveway upon which the Defendant was arrested is not a driveway "open to the general public." The Defendant argues that its private posted character prevents it from being "generally accessible to motor vehicles." Counsel argued below that "private property does not fall within the statute," . . . "because there are laws called trespass laws, and trespass laws say you cannot generally access my property and I am suggesting to you that when you post no trespassing signs around your property and the reason an officer comes and checks up on you if you're back there is because you're on property that not generally, you know --" Transcript, pp 14-15.

Nickerson properly instructs trial courts to consider the phrases "open to the general public" and "generally accessible to motor vehicles" as disjunctive and descriptive of distinct alternative places other than highways where driving a vehicle under the influence of liquor is prohibited. Further, recognizing that the Court should presume that every word in a statute has some meaning and that the Court should avoid any construction which would render the statute or part of it surplusage or nugatory, *Id.*, p 439, the phrase "generally accessible to motor vehicles" may not be construed in a vacuum. As the District Court properly noted, if OUIL arrests were to be limited to public property or private property open to the general public, there would have been no need to add the phrase "generally accessible to motor vehicles." Clearly, the Legislature's intent was to prohibit drunk driving not only on highways and in public parking lots and in places open to the general

public but in other private places that are "generally accessible to motor vehicles." The question presented here is whether this driveway was "generally accessible to motor vehicles."

While the Court believes that the word "generally" is a word of limitation and expresses a legislative intent that the mere presence of a motor vehicle not be equated with access and the automatic application of the statute, the facts here do not test the outer limits of the phrase "generally accessible to motor vehicles." Illustrations provided by counsel and the District Court included swamps, lakes, open fields and backyards.

Here, it is recognized that the Defendant was arrested on a gravel, private driveway which provides an entryway and parking for the businesses which it approaches from the rear. By definition, a driveway and the parking area associated with it are intended to be "generally accessible to motor vehicles." It is also evident that the property owner did not intend that the area be open to the general public. The Legislature though, has made it clear that those who drive while intoxicated on private parking lots and on private roads and driveways are not immune from the application of the OUIL statute, whether or not they are trespassing.

The salutary policy addressed by the OUIL statute is the prevention of drunken motor vehicle operators causing death, serious physical injury or property damage to themselves or to others. *Id.*, p 441; *People v Wood*, 450 MI 399, 404; 538 NW2d 351 (1995). For purposes of the underlying policy, it hardly matters whether the drunken driver is driving in a supermarket parking lot where the public is generally invited or on the private road system within an industrial complex or whether the drunken driver is lawfully or unlawfully using a private road system.

For all the foregoing reasons, the Court affirms the determination of the District Court and remands the case to that Court for any further proceedings. This Court does not retain jurisdiction.

IT IS SO ORDERED.

HONORABLE PHILIP E. RODGERS, JR.
Circuit Court Judge

Dated: 5/27/99