

1/7/2019 “See News Release 001 for any Concurrences and/or Dissents.”

**SUPREME COURT OF LOUISIANA**

**No. 2019-CC-32**

**PATRICIA J. GONZALEZ**

**VS.**

**MONTY MONTELONGO AND THE STATE OF LOUISIANA,  
DEPARTMENT OF PUBLIC SAFETY AND CORRECTIONS, OFFICE OF  
THE STATE POLICE**

**ON SUPERVISORY WRITS TO THE CIVIL DISTRICT COURT  
FOR THE PARISH OF ORLEANS**

**Hughes, J., dissenting.**

I respectfully dissent. The opinion of the U.S. Supreme Court in *Graham v. Connors*, 490 U.S. 389, 396 (1989), as well as the opinions of this court in *Mathieu v. Imperial Toy Corp.*, 94-0952 (La. 11/30/94), 646 So.2d 318, and *Kyle v. City of New Orleans*, 353 So.2d 959 (La. 1977) are controlling, without qualification. The issue in this case is not plaintiff’s level of intoxication, but what happened at the time of the incident.

According to this court’s order, if plaintiff does not testify about her “level of intoxication,” the defense may not open this door by asking leading questions on cross examination.

The officer’s observations and the results of the field sobriety test are admissible. But the uncertified intoxilyzer results from two hours later cannot be used to prejudice the plaintiff in the eyes of the jury under the guise of impeaching her credibility on what happened at the time of the incident.