



LEGAL UPDATE

MICHIGAN STATE POLICE TRAINING DIVISION

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Conspiracy charges may still occur even if the police become involved.

Troopers stopped a vehicle loaded with drugs. The occupants were arrested and a sting was set up with the buyers. The buyers met the undercover officers and an exchange is made. As they drive off they are arrested. The group was charged with conspiracy. The Ninth Circuit dismissed the charges because when the police became involved the conspiracy ceased to exist. The United States Supreme Court reversed.

HELD – “A conspiracy does not automatically terminate simply because the Government has defeated its object. The agreement to commit an unlawful act is ‘a distinct evil,’ which ‘may exist and be punished whether or not the substantive crime ensues.’ Where police have frustrated a conspiracy’s specific objective but conspirators (unaware of that fact) have neither abandoned the conspiracy nor withdrawn, these special conspiracy-related dangers remain, as does the conspiracy’s.” U.S. v Recio, 123 S.Ct. 819 (2003)

Statute on stun guns rewritten to include a number of exemptions – MCL 750.224a (P.A. 709 of 2002)

(1) Except as otherwise provided in this section, a person shall not sell, offer for sale, or possess in this state a portable device or weapon from which an electrical current, impulse, wave, or beam may be directed, which current, impulse, wave, or beam is designed to incapacitate temporarily, injure, or kill.

(2) This section does not prohibit any of the following:

The possession and reasonable use of a device that uses electro-muscular disruption technology by a peace officer, an employee of the department of

corrections authorized in writing by the director of the department of corrections, probation officer, court officer, bail agent authorized under section 167b, licensed private investigator, aircraft pilot, or aircraft crew member, who has been **trained** in the use, effects, and risks of the device, while performing his or her official duties.....

(3) A manufacturer, authorized importer, or authorized dealer may demonstrate, offer for sale, hold for sale, sell, give, lend, or deliver a device that uses electro-muscular disruption technology to a person authorized to possess a device that uses electro-muscular disruption technology and may possess a device that uses electro-muscular disruption technology for any of those purposes.

(4) A person who violates this section is guilty of a felony punishable by imprisonment for not more than 4 years or a fine of not more than \$2,000.00, or both.

- 1) *Traffic stops may be based on reasonable suspicion.*
- 2) *Officers do not have to “verbally” identify themselves as police officers under 257.311.*

An officer was notified that a wanted subject was possibly driving a car belonging to the subject’s mother and traveling to his mother’s house. Warrant entries provided a description of the subject including that he was a “fairly large black male in his early 20’s.” The officer went to the location and observed a vehicle matching the description. The officer also observed that the driver had similar characteristics as those identified in the warrants. The officer activated his emergency lights of his fully marked police car and pulled in front of the vehicle as it was turning into a driveway. The officer approached and asked to see the driver’s license. The subject stated he did not have one at which time the officer informed him he

was under arrest. The subject then maneuvered his car around the officer and fled. He was eventually charged with resisting and obstructing an officer. The district court dismissed the charges on the grounds that the officer did not verbally identify himself as required under 257.311, and also that the officer did not have reasonable suspicion to believe a crime was afoot.

HELD – “From the record presented it is clear that there was a reasonable suspicion for the officer to conclude that defendant had committed a crime. While he did not know defendant, he was aware that there was a felony warrant for defendant’s arrest and had a description of defendant from the warrant entry. He observed a vehicle matching the description of defendant’s mother’s vehicle driving toward defendant’s mother’s home, and he observed that the driver appeared to match the description of defendant from the warrant entry. Thus, he clearly had a basis to investigate whether the person he observed was defendant.”

The court also held that the officer identified himself as required under MCL 257.311. “The officer had activated the emergency equipment in his fully marked sheriff’s department vehicle and approached defendant while he was fully uniformed as a deputy sheriff. We hold that as a matter of law, such indicia are sufficient to satisfy the statutory requirement that an officer identify himself or herself as an officer when requesting a driver’s license from a person who was operating a motor vehicle.” *People v McKinley*, C/A No. 236310, (January 14, 2003)

Statute makes possession of stolen car a felony, regardless of value – MCL 750.535(7) (P.A. 720 of 2002) effective 4-1-03

A person shall not buy, receive, possess, conceal, or aid in the concealment of a stolen motor vehicle knowing that the motor vehicle is stolen, embezzled, or converted. A person who violates this subsection is **guilty of a felony** punishable by imprisonment for not more than 5 years, or a fine of not more than \$10,000.00 or 3 times the value of the motor vehicle purchased, received, possessed, or concealed, whichever is greater, or both imprisonment and a fine.

CCW and DNR violations - Attorney General’s Opinion No. 7123 (February 11, 2003)

“A person licensed to carry a concealed pistol may possess a pistol while hiking or camping within a state park provided that the pistol is not loaded. A person licensed to carry a concealed pistol may possess a loaded pistol within a state park only during established hunting seasons on lands designated open to hunting or at a target range established by the Department of Natural Resources or during an officially sanctioned field trial.”

“A person licensed to carry a concealed pistol is also subject to the rules, regulations, and orders of the Department of Natural Resources regulating the possession of firearms and may not possess or carry a pistol while hunting deer during "bow and arrow only" hunting season, unless the person is licensed to hunt deer with a firearm and is hunting in an area open to firearm deer hunting.”

Changes made in drug penalties by changing amounts and eliminating mandatory minimums – (P.A. 665 of 2002)

Example for **manufacturing/delivering/etc** for schedule 1 and 2:

- 1,000 grams or more** = felony punishable by imprisonment for life or any term of years
- 450 grams to 1,000 grams** = felony punishable by imprisonment for not more than 30 years.
- 50 grams to 450 grams** = felony punishable by imprisonment for not more than 20 years.
- Less than 50 grams** = felony punishable by imprisonment for not more than 20 years.

Penalties for **possession** of schedule 1 or 2:

- 1,000 grams or more** = felony punishable by imprisonment for life or any term of years.
- 450 grams to 1,000 grams** = felony punishable by imprisonment for not more than 30 years.
- 50 grams to 450 grams** = felony punishable by imprisonment for not more than 20 years.
- 25 grams to 50 grams** = felony punishable by imprisonment for not more than 4 years.
- Less than 25 grams** = felony punishable by imprisonment for not more than 4 years.