



LEGAL UPDATE

MICHIGAN STATE POLICE
TRAINING DIVISION

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Probable cause to issue a search warrant may be based on logical inferences.

The defendant in this case was wanted on a federal indictment for delivery of cocaine. Officers began surveillance on the apartment he was supposedly staying at. The manager of the complex stated that the apartment was rented to a female and not the defendant. Surveillance on the apartment showed that defendant's vehicle was parked there on two different occasions. He was eventually arrested while he was driving in his car. At the time of his arrest, he lied to the officer about where he lived and gave a different address. A search of the vehicle revealed a key to the apartment and a telephone bill to the defendant mailed to the apartment. A dog was also called and cocaine was located inside the vehicle. Based on this information, a search warrant was obtained for the apartment and additional evidence was seized.

The court upheld the probable cause for the search warrant. "Under the totality of these circumstances, a reasonably cautious person could conclude that there was a substantial basis for the magistrate's finding of probable cause. Indeed, defendant was arrested as a drug trafficker, cocaine was found in his vehicle, and there was abundant evidence that he resided at or habitually used the Kentwood apartment and had lied about this to the police. Defendant contends that the affidavit did not support a search of the Kentwood apartment because nothing in the affidavit tied the alleged drug activity to the apartment. However, defendant's denial that he lived at the Kentwood apartment, combined with the reasonable inference that drug traffickers often keep evidence of illicit activity in their homes, provided a sufficient basis for the magistrate's finding of probable cause to search the apartment." In previous cases, the officers included in the affidavit a statement about their training and experience. That statement was not included in this affidavit. "The magistrate,

however, was free to make this logical inference on his own. Defendant's denial that he lived at the Kentwood apartment provided even more evidence that contraband would be found in the apartment. The trial court did not err in denying defendant's motion to suppress." People v Nunez, C/A 216973 (September 22, 2000)

Assault with the intent to commit unarmed robbery is included in felony murder.

While a woman was walking through a parking lot, a man tried to steal her purse. A witness observed the altercation and attempted to stop it. While he was trying to do this, another man shot and killed him. The question presented was whether assault with the intent to commit unarmed robbery falls under the felony murder statute. The court held that the charge did fall under the offense of robbery under the felony murder statute. People v Ross, C/A No. 222763 (August 18, 2000)

For unarmed robbery charges there must be a completion of the act.

Defendant was observed shoplifting at a Meijer's store. Store security stopped him in the parking lot. An altercation arose where one of the security guards suffered a fractured bone and two broken teeth. The suspect was convicted of unarmed robbery.

The Court of Appeals overturned his conviction. "Defendant would have been guilty of unarmed robbery if he had succeeded in his escape. However, viewing the crime, as a whole larcenous transaction requires the conclusion that there was insufficient evidence to support defendant's conviction of unarmed robbery because defendant was unsuccessful in escaping and thus never

completed the larcenous transaction. Therefore we conclude that there was insufficient evidence to support defendant's conviction of unarmed robbery." People v Randolph, C/A No. 214109 (September 1, 2000). (In this case, charges of retail fraud and aggravated assault may have been more appropriate.)

The statute of limitation does not toll when the suspect is living in another state.

The defendant in this case was a high school teacher who sexually assaulted one of his students in 1983. He eventually moved to Florida where he again taught high school music. In 1994 or 1995, criminal sexual charges were brought against him in Florida. After reading the media accounts from Florida, the victim decided to come forward with her allegations. During his stay in Florida he resided openly and publicly for over six years. He was then arrested and brought back to Michigan. He argued that the statute of limitations barred his trial. Even though he was living in Florida, he was not hiding from anyone. The court of appeals disagreed.

The court held that it was not whether the defendant was hiding that tolled the statute of limitations, but rather if he moved out of state. "We conclude that the trial court did not err in holding that the period of limitations was tolled after defendant moved to Florida in 1987 and that, consequently, the charges in the case were timely filed." People v Crear, C/A No. 209195 (August 15, 2000)

Under the Michigan Constitution a person has the right to a jury for MIP trials.

During a traffic stop, troopers charged the defendant, as passenger, with MIP. The trial court did not allowed a jury trial because even though MIP is a misdemeanor a defendant cannot be sentenced to jail. The Court of Appeals disagreed. "Even though the offense of minor in possession of alcohol is petty and does not permit incarceration, the offense is a criminal misdemeanor." The defendant therefor had the right to a jury trial under the Michigan Constitution. People v Antkoviak, C/A No. 221743 (September 8, 2000)

CSC 2nd degree includes acts between inmates and employees of jails and prisons.

P.A. 227 of 2000 included the following into CSC 2nd. (effective 10-01-2000)

There must be sexual contact and one of the following:

- The victim is under the jurisdiction of the department of corrections and the actor is an employee, a contractual employee of, or a volunteer with the department of corrections who knows that the other person is under the jurisdiction of the department of corrections.
- The victim is under the jurisdiction of the department of corrections and the actor is an employee, a contractual employee of, or a volunteer with a private vendor that operates a youth correctional facility under section 20g of 1953 PA 232, MCL 791.220g, who knows that the other person is under the jurisdiction of the department of corrections.
- The victim is a prisoner or probationer under the jurisdiction of a county for purposes of imprisonment or a work program or other probationary program and the actor is an employee, a contractual employee of, or a volunteer with the county or the department of corrections who knows that the other person is under the county's jurisdiction.
- The victim knows or has reason to know that a court has detained the victim in a facility while the victim is awaiting a trial or hearing, or committed the victim to a facility as a result of the victim having been found responsible for committing an act that would be a crime if committed by an adult, and the actor is an employee, a contractual employee of, or a volunteer with, the facility in which the victim is detained or to which the victim was committed.