



LEGAL UPDATE

MICHIGAN STATE POLICE
TRAINING DIVISION

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A person maintains an expectation of privacy in their luggage.

As a customs officer was exiting a bus, he was squeezing the soft luggage which passengers had placed in the overhead storage space. In one bag he felt a brick like object. He then asked the owner for consent, which was given. The bag was opened and the officer located a brick of methamphetamine.

The United States Supreme Court suppressed the evidence stating the search violated the owner's expectation of privacy. "Under this Court's Fourth Amendment analysis, a court first asks whether the individual, by his conduct, has exhibited an actual expectation of privacy; that is, whether he has shown that he sought to preserve something in private. Here, petitioner sought to preserve privacy by using an opaque bag and placing it directly above his seat. Second, a court inquires whether the individual's expectation of privacy is one that society is prepared to recognize as reasonable. Although a bus passenger clearly expects that passengers or bus employees may handle the bag, he does not expect that they [or police] will feel the bag in an exploratory manner. But this is exactly what the agent did here." Bond v United States, U.S. SupCt No. 98-9349 (April 17, 2000).

(Note: The consent exception to the search warrant rule was not applicable because the officer asked for permission to search after he had felt the bag for its contents.)

To justify a warrantless entry into a house under exigent circumstances, the officers must show more than a "mere possibility" that evidence could be destroyed.

During Operation HEMP, an officer in a helicopter observed marijuana growing in the back yard of defendant's house. The ground crew was notified

and responded to the address. They attempted to make contact with the homeowner, but no one was home at the time. The officers then entered and seized eight plants from the back yard. During this time, the helicopter was flying over the residence and neighbors came out to investigate what was occurring.

The question presented was whether there were sufficient exigent circumstances to allow the entry without a warrant. "The only asserted basis for believing that the plants would be destroyed was the mere presence of the helicopter, flying low and creating noise, would alert someone to police detection of the criminal activity, leading someone to destroy the plants. However, this suspicion was not based on any specific or objective facts other than the presence of the helicopter, which the police had sent in the first place. To justify an entry and seizure based on exigent circumstances, the police must show more than a mere possibility that the evidence will be destroyed." The court suppressed the evidence. People v Grubb, C/A No. 213121 (April 21, 2000) Unpublished.

A trial court's determination of voluntariness will not be overturned absent clear abuse.

Defendant was picked up for questioning on a homicide. At 2:23 P.M., he initially denied any involvement during his first statement. He was later confronted with a number of inconsistencies and stated that the gun discharged as it fell from the victim's hand and hit the floor. He asked to talk to his father and he was told he would be able to do that later. At 7:10 P.M. he was given a polygraph test. Prior to the test, he was advised of his Miranda rights, which he waived. During the exam, he was told that he was not being truthful. He then confessed to intentionally shooting the victim. He was then placed under arrest and again advised of

his *Miranda* rights. He then gave a recorded statement at 11:35 P.M. During this time period he was also told that he was not under arrest and was free to leave at any time.

The trial court upheld the confession as voluntarily given and the Michigan Supreme Court agreed. “The trial court found that defendant was treated fairly by the investigating officers throughout his interrogation. Defendant was provided with food and water and was told on at least two occasions that he was not under arrest and could leave at any time. Defendant himself testified that he was treated fairly by the officers and that he was not coerced in any manner into making the challenged statements. Defendant was also advised of his *Miranda* rights and, as the majority correctly concludes, voluntarily waived those rights before making the challenged statements. Although there was evidence that defendant suffers from an auditory processing disorder and that he has below average intelligence, the trial judge, who was in the best position to observe defendant's demeanor, noted that defendant, while testifying in this matter, understood the questions presented to him and responded to those questions in an appropriate manner.” People v Sexton, MSC No. 115216 (April 25, 2000).

The removal of the victim from life support does not excuse criminal liability.

In this case, defendant beat his aunt to the point that she had to be put on life support. It became evident to the family that the victim would not recover from her injuries and she was removed from the respirator.

The defendant argued on appeal that removing her from the life support system caused the victim's death. The Michigan Supreme Court disagreed. “The victim's death was the natural and inevitable result of the injuries inflicted by the defendant, notwithstanding the temporary postponement of that result through artificial respiration.” People v Bowles, MSC No. 114661 (March 28, 2000).

Statements may be admissible against a co-defendant if shown to be reliable and against penal interest.

During an interview, Mr. Stray admitted performing fellatio on Mr. Schutte's seven-year-old son. The statement also implicated Mr. Schutte in the act. The question presented was whether the statement was admissible against Mr. Schutte.

The court found Stray's statement to be admissible against Schutte. Stray had appeared at the police station voluntarily and agreed to be questioned. Schutte had told Stray that he had already told the cops what had happened and urged Stray to tell the truth. Stray did not shift the blame solely on defendant and admitted that he also engaged in fellatio with the victim. “We conclude that those portions of the statement pertaining to defendant need not have been severed since the whole statement was against Stray's penal interest and there were sufficient indicia of reliability.” People v Schutte, C/A No. 213259 (May 2, 2000).

Statements obtained during plea bargaining may be admitted in trial.

During plea negotiations, defendant admitted to being involved in a robbery and murder. At each of the interviews he was given warnings that his statements might be used against him. He waived his rights and a plea arrangement was reached. When he was in front of the judge, he changed his mind stating that he no longer wanted to enter into the plea bargain. The question then arose on whether the admissions he made during the plea negotiations could be used against him during the trial.

MRE 410(4) provides that any statement made in the course of plea discussions with a prosecutor is generally inadmissible at trial. However, as long as the defendant is appropriately advised that his statements could be used against him, and the statements are voluntarily, knowingly, and understandingly made, the Michigan Supreme Court held that statements in a plea bargain can be used by the prosecution. People v Stevens, MSC No. 115057 (April 25, 2000).