



# LEGAL UPDATE

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TRAINING DIVISION

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## *Anonymous call of man with gun does not by itself authorize a Terry stop.*

An anonymous caller reported that a young black male standing at a particular bus stop and wearing a plaid shirt was carrying a gun. Officers responded and observed three black males. Absent the tip, the officers had no reason to suspect any of the three of illegal conduct. They did not see a firearm or observe any unusual movements. They approached the subjects and frisked them finding a gun on J.L., who was a juvenile at the time.

“An anonymous tip that a person is carrying a gun is not, without more, sufficient to justify a police officer’s stop and frisk of that person. Here, the officers’ suspicion that J.L. was carrying a weapon arose not from their own observations but solely from a call made from an unknown location by an unknown caller. The tip lacked sufficient indicia of reliability to provide reasonable suspicion to make a *Terry* stop. It provided no predictive information and therefore left the police without means to test the informant’s knowledge or credibility.” Florida v J.L., U.S. SupCt. No. 98-1993 (March 28, 2000).

## *Lying to a police officer may result in R and O charges.*

Officers responded to a loud party complaint. Upon arrival one officer approached the defendant and requested his identification on the suspicion that he was a minor in possession of alcohol. The suspect lied by giving the name of another person. Later it was determined that the suspect had lied. He was then charged with resisting and obstructing.

“In this case, the very limited but undisputed evidence on the record tended to show that Vasquez lied to the trooper about his name and age when the trooper asked him for that information. His act was,

relatively speaking, passive. Nevertheless, it suggested that Vasquez wished to prevent the State Police from instituting any legal action against him as an individual and would actually hinder law enforcement agents from taking action against him, which fits under the broad definitions of resisting, obstructing or opposing. We see a marked similarity between the effect of saying “no” to a police request, as in *Philabaum*, and giving false and misleading information in response to a similar request by a State Police trooper; both responses presented an obstacle to the investigating law enforcement agent’s attempt to discharge his legal duties.”

“We hold that the trial court abused its discretion when it quashed the criminal information because MCL 740.479; MSA 28.747 prohibits lying to a law enforcement agent in the discharge of his duties while attempting to maintain the peace.” People v Vasquez, C/A No. 222895 (March 17, 2000)

## *Felony firearm charges apply where firearms are close to narcotics.*

During an interview with the police, defendant indicated that there was cocaine at his house. Officers obtained a search warrant and during the execution located two handguns that were on top of a dresser and within three feet of a dresser drawer containing the cocaine. He was charged with possessing a firearm during the commission of the felony of possessing 50 to 225 grams of cocaine.

The Michigan Supreme Court upheld the charges. “The drugs and weapons were close enough that a jury could conclude that the defendant possessed both at the same time.” People v Burgenmeyer, MSC No. 112173 (March 7, 2000)

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***An officer's experience may help to establish probable cause to issue a search warrant.***

The affidavit to a search warrant stated that an undercover officer went to a house and attempted to buy one pack of heroin. An occupant showed the officer a large bundle of small blue folded coin envelopes wrapped in rubber bands. However, the subject would not sell to the officer. He told the officer to return with someone he knew. The affidavit continued with information that the officer had been on over 100 narcotics raids and has seen similar coin envelopes in the past containing heroin.

The lower courts suppressed the evidence obtained on the basis that the warrant established mere suspicion and not probable cause. The Michigan Supreme Court reversed. "Considering these facts in a common sense and realistic manner, we are certain the magistrate had a substantial basis for finding probable cause to issue the search warrant because there was a fair probability that contraband or evidence of a crime would be found at the home where this conversation took place." People v Whitfield, MSC No 113934 (March 7, 2000)

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***Sixth Circuit upholds firearm disqualification for domestic violence, even where the suspect has no knowledge of the law.***

Defendant was convicted in Michigan for domestic assault. Later he was convicted under Sec. 922(g)(9) of the U.S. Code for possessing a shotgun and two pistols in his home. He argued on appeal that he did not knowingly possess the weapons in violation of federal law. In fact, the State of Michigan returned one of the guns to him.

However, the Sixth Circuit upheld the conviction. "We conclude that Beaver's conviction on a domestic violence offense sufficiently placed him on notice that the government might regulate his ability to possess a firearm." While the State of Michigan returned one of the guns to him, it was under no obligation to update Mr. Beavers on recent additions to federal law. U.S. v Beavers, 2000 FED App. 0058P (6<sup>th</sup> Cir.)

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***The standard for lawful arrest is probable cause and not beyond a reasonable doubt.***

Officers were dispatched to a domestic dispute where they determined that a PPO had been issued against the male. The PPO was verified via LEIN. The subject had also received notice. Defendant resisted and struggled with the officers as they tried to handcuff him. He was charged and convicted with resisting and obstructing.

He argued on appeal that the prosecutor failed to prove *beyond a reasonable doubt* that the arrest was lawful. The court disagreed and held that the proper standard for a lawful arrest is *reasonable cause*. In this case the officers had reasonable cause to believe the PPO had been violated and since the arrest was lawful, the R and O charges were upheld. People v Freeman, C/A No. 215821 (March 17, 2000)

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***Legal Training Announcement***

The State Police Training Division will be hosting another legal update on May 3rd, 2000. Registration forms will be sent out to all agencies. For further information or additional registration forms please contact Nicole Bogard at (517) 322-6336.

Visit the Training Division Web Page on the Intranet to access other legal updates and the Michigan Compiled Laws. On the Internet go to [www.msp.state.mi.us](http://www.msp.state.mi.us). Then go to Bureaus and Divisions, then Training Division, then Legal Updates.

***This update is provided for informational purposes only. Officers should contact their local prosecutors for their interpretations.***