



MICHIGAN STATE POLICE

LEGAL UPDATE

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This update is published by the Michigan State Police Executive Division.
Questions and comments may be directed to MSPLegal@Michigan.gov.
Past editions can be found on the [Legal Resources web page](#).

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CRIMINAL PROCEDURE

Full citations have been omitted.

A prosecutor may be disqualified from trying a case when he or she participates in the investigation

In *People v. Tesen*, an assistant prosecutor conducted a forensic interview of a child abuse victim. The interview was observed by at least five other people – all members of the local team responsible for such interviews. A detective, not the prosecutor, prepared the report concerning the interview. However, the interviewing prosecutor was assigned to prosecute the case.

At the defendant's request, the trial court disqualified the assistant prosecutor because he was a necessary witness who could be called by the defense.

The Michigan Court of Appeals upheld the disqualification, noting that there is a difference between post-charge interviews by prosecutors conducted for trial preparation, and those conducted when a prosecutor is the fact-gatherer. When a prosecutor becomes a fact-gatherer, he or she must be able to testify about their role, qualifications, experience, and the actual interview, and therefore they may be disqualified from prosecuting the case.

Ineffective assistance of defense counsel does not automatically render a confession inadmissible

In *People v. Frazier*, a murder suspect was accompanied by his attorney when he reported to the police station to be interviewed. He waived his rights in the presence of his attorney, but his attorney did not attend the interview – the attorney claimed he believed the police would not allow him to be present.

After the trial court and Michigan Court of Appeals refused to exclude his confession (he sought exclusion based upon an ineffective assistance of counsel claim), the defendant petitioned for a writ of habeas corpus in a United States District Court. There the court held that even though the government had done nothing wrong, the confession must be excluded as a result of the attorney's ineffectiveness.

Of course, the implications are serious – defense attorneys can use the court's reasoning to have an otherwise admissible confession excluded.

In its [opinion](#), the Michigan Supreme Court noted that the purpose of the exclusionary rule is to deter police misconduct, and exclusion in the present case did nothing to advance that purpose. In the end, the Court held that where there has been no government misconduct, a confession and its fruits will not generally be excluded.

Note: Despite its faulty reasoning and the Michigan Supreme Court's contrary holding, the federal court's ruling stands. This is not because it is correct, but because the prosecution failed to appeal to the federal Court of Appeals. However, the Supreme Court's opinion states the law as it should be applied in Michigan.

Passengers arrested during a traffic stop may challenge the validity of the stop

In *Brendlin v. California*, officers conducted a traffic stop without legal justification. During the stop, they recognized the defendant as a parole violator and arrested him. In a subsequent search of the vehicle, the officers found evidence with which they charged the defendant with possession and manufacture of methamphetamine.

The United States Supreme Court held that when police make a traffic stop, all occupants are seized within the meaning of the Fourth Amendment. As a result, a defendant-passenger has standing to challenge the validity of the stop, and evidence found as a result of an unlawful stop may be suppressed, even when the person charged is only a passenger.

SEARCH & SEIZURE

Full citations have been omitted.

A lawful search of a vehicle extends to items in the vehicle owned by passengers

In the [December 2006 edition](#) of the Legal Update, we discussed the Michigan Court of Appeals' opinion in *People v. Labelle*. In that opinion, the Court upheld the suppression of evidence found during a consent search because consent was given by the driver and the evidence was found in a backpack owned by a passenger (Labelle).

The Michigan Supreme Court has reversed the Court of Appeals. In its [order](#), the Supreme Court held that when police have authority to search the entire passenger compartment of a vehicle, that authority extends to "any unlocked containers located therein, including the backpack in this case."

LEGAL RESOURCES

The Michigan Department of History, Arts, and Libraries has an [eLibrary](#) that provides Michigan residents with access to a wide variety of periodicals and other publications that can be useful when conducting research (look under the "MeL Databases" heading). Access is free, but requires Michigan residents to sign on using a driver's license number.

BACK TO BASICS

Note: The following material does not represent new law. Instead, it is intended to reinforce basic rules of law that police officers frequently apply.

There is no general "crime scene exception" to the search warrant rule

The United States Supreme Court has consistently held that a person has a Constitutionally protected expectation of privacy in his or her residence, even if the person has committed a crime. Police may enter a residence to determine if victims need assistance or to determine if a killer is present at a murder scene, but a warrant is necessary for further searching (*Thompson v. Louisiana*).

The general rule is that police may enter a residence under a recognized exception to the search warrant rule (e.g., consent or emergency). However, once the justification for the exception has expired, officers must obtain a search warrant to search a residence for evidence.

SUBSCRIPTIONS

Officers from any agency are welcome to subscribe to receive the Update via e-mail, and may do so by sending an e-mail to MSPLegal@Michigan.gov. The body of the e-mail must include:

1. Name (first & last)
2. Rank
3. Department
4. Work phone
5. E-mail address

DID YOU KNOW?

Note: The following material does not represent new law. Instead, it is intended to inform officers of infrequently used laws that might prove useful.

It is illegal to leave a vehicle running while it is unattended

[MCL 257.676](#) makes it a civil infraction to leave a vehicle unattended without “stopping the motor of the vehicle.” The same section requires that an unattended vehicle be placed in park or have the parking brake set.
