



# MICHIGAN STATE POLICE LEGAL UPDATE

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## CRIMINAL PROCEDURE

### A child may have the capacity to be conscious of his own impending death for purposes of a dying declaration

In *People v. Stamper*, the defendant was convicted of murder, criminal sexual conduct, and child abuse in the death of his girlfriend's four-year-old son.

Before going to the hospital the victim lay on a bed and his mother asked him to open his eyes and he responded "Mom, I can't, I'm dead." While at the hospital, the victim told a nurse that he received his injuries "from Mike" and stated that Mike was "mom's wife." At trial, these statements were admitted into evidence as a dying declaration.

A dying declaration is an exception to the rule that excludes most hearsay statements. In order for a dying declaration to be admitted, the person making the statement must: 1. be unavailable to testify, 2. believe their death to be imminent, and 3. make a statement concerning the cause or circumstances of their death.

The defendant in this case argued that a four-year-old child cannot be aware of impending death, and thus his statements should not have been admitted. The Michigan Supreme Court disagreed, holding that age alone will not preclude admission of dying declarations. As with adults, knowledge of impending death is to be analyzed on a case-by-case review of the facts.

## SEARCH & SEIZURE

### Lawful searches of vehicles incident to arrest include locked glove boxes

In *United States v. Nichols*, officers conducted a traffic stop after learning that the vehicle's owner was wanted on an outstanding robbery warrant. The owner was found in the front passenger seat and the officers arrested him. During a search subsequent to the arrest, officers opened the vehicle's locked glove box using the key. Inside they found a loaded pistol.

Nichols appealed a number of issues, most notably arguing that the officers exceeded the permissible scope of a search incident to arrest when they opened the locked glove box. He asked the court to consider a locked glove box to be the same as a closed vehicle trunk – that is, not within the scope of a search incident to arrest.

The United States Sixth Circuit Court of Appeals held that a glove box, unlike a trunk, is reachable by occupants and therefore may properly be searched incident to arrest – even when it is locked.

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