



MICHIGAN STATE POLICE LEGAL UPDATE

No. 68

OCTOBER 14, 2008

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 at www.michigan.gov/msp-legal.

SEARCH & SEIZURE

A canine sniff of the exterior of a house is not a search

In *People v. Jones*, police had information that the defendant kept illegal drugs at a house he owned. Police took a narcotics dog to the house and the dog gave a positive indication at the front door. Police obtained a search warrant based on the dog's reaction and drugs were found during the search.

The Michigan Court of Appeals upheld the canine sniff using the same rationale used in allowing sniffs of vehicles. That is, because the sniff was of an area open to the public (a front porch anyone could enter), the defendant had no reasonable expectation of privacy. Significant to the Court were the facts that the canine team simply walked onto the porch. They did not cross barriers (such as gates) and there were no signs forbidding people from entering the property.

DID YOU KNOW?

Licenses do not expire on weekends or holidays

MCL 8.6 governs time periods contained in statutes and administrative rules. Under this statute, fixed time periods expiring on a Saturday, Sunday, or legal holiday automatically extend to the next business day. The statute applies to commonly encountered state-issued items such as driver licenses and registration plates.

Example: When a vehicle registration shows a Saturday expiration, it is actually valid through 11:59 p.m. on Monday (or Tuesday if Monday is a holiday). So, if an officer encounters the vehicle on Sunday or Monday, it is not proper to stop the vehicle or issue a citation for the expired plate.

BACK-TO- BASICS

Officer safety concerns alone cannot legally justify a pat down

One of the most commonly misapplied exceptions to the search warrant requirement is the *Terry* pat down or stop-and-frisk. In order to use this exception, an officer must have (and articulate) a reasonable suspicion that criminality is afoot and a reasonable suspicion that the subject is armed.

The courts created the exception in order to protect police officers, but have limited its use to those cases in which danger can be articulated – thus, the above elements must always be shown. The courts have not approved the practice of patting down everyone who poses a potential danger. Especially problematic are pat downs conducted as a matter of routine.

Since concerns for officer safety alone will never justify a *Terry* pat down, it is recommended that officers include the above elements in their report – either explicitly or implicitly through a description of the incident. Officers should avoid report language indicating a pat down was done as a matter of routine or without the necessary elements (e.g., “the subject was patted down for officer safety”).

Lastly, when an officer doubts the existence of the elements of a lawful *Terry* pat down, he or she should use another exception such as consent.

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