



MICHIGAN STATE POLICE LEGAL UPDATE

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CRIMINAL LAW AND PROCEDURE MANUAL

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CRIMINAL LAW

A homeowner or another person rightfully possessing a home after it has been foreclosed on and sold at a sheriff's sale cannot be prosecuted for larceny in a dwelling house when he or she removes fixtures from the home during the statutory redemption period.

In [People v. March](#), March was granted a power of attorney from his father that gave March the right to dispose of any real or personal property belonging to his father including his father's home that was subject to a mortgage. Later, the mortgage went into default and the bank foreclosed on the home and sold it at a sheriff's sale. From the date it was sold, March and his father had six months to void the purchase and redeem the home by paying the buyer the full purchase price. The home was not redeemed. During the redemption period, March allegedly removed various fixtures (lights, sinks, cabinets, etc.) from the home, which were later discovered in a search of March's residence. March was arrested and charged with larceny in a dwelling house pursuant to [MCL 750.360](#) and receiving and concealing stolen property pursuant to [MCL 750.535](#).

Before trial, March filed a motion to dismiss the charges and argued that since he had retained legal title and the right to possession of the property during the redemption period, he could not be found to have wrongfully taken the "property of another" when he removed the various fixtures during the redemption period. The trial court granted March's motion and dismissed the charges. The prosecution appealed, the Court of Appeals reversed the trial court, and March appealed to the Michigan Supreme Court.

The Michigan Supreme Court held that since March held the exclusive possessory right in the home and its fixtures at the time of the alleged larceny, he could not

have wrongfully dispossessed anyone else of the rightful possession of that property, including the foreclosure-sale purchaser. The Supreme Court found March's actions did not constitute a larceny in a dwelling house pursuant to [MCL 750.360](#), because the "property of another" was not stolen, and since it was not stolen, March's actions similarly did not constitute receiving and concealing stolen property pursuant to [MCL 750.535](#).

Officers should note that the ruling is limited to circumstances in which the possessory rights in the property are retained by the homeowner or another person during the redemption period. Additionally, the Supreme Court noted that despite the failure of the larceny charge in this case, such actions might give rise to other criminal offenses.

Resisting and obstructing statute applies to reserve police officers

[Legal Update No. 118](#) discussed the Michigan Court of Appeals' opinion in [People v. Feeley](#). In this case, police officers arrested Feeley for resisting and obstructing a police officer in violation of [MCL 750.81d](#), for failing to comply with the command of a reserve police officer. The Court of Appeals held that the resisting and obstructing statute did not apply to reserve police officers.

The Michigan Supreme Court reversed the Court of Appeals' judgment. In its unanimous [opinion](#), the Supreme Court held that reserve police officers are a subset of police officers for purposes of [MCL 750.81d\(7\)\(b\)\(i\)](#). The Supreme Court noted that the plain language of the statute does not explicitly distinguish reserve officers from police officers and the statute does not provide any indication the two should be treated differently.

VEHICLE CODE

A temporary registration plate that is not in a clearly visible position or in a clearly legible condition provides reasonable suspicion that MCL 257.225 is being violated.

In [People v. Simmons](#), Simmons was stopped while driving a vehicle that did not have a metal registration plate attached at the rear of the vehicle. When stopping the vehicle, the officer noticed an unreadable piece of paper on the left side of the rear window. The officer looked at the paper again from approximately 3 or 4 feet away as he approached the driver's side of the vehicle, but he could not see any

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numbers or letters. The writing was very dim, which made the paper illegible. The officer, for safety reasons, did not stop to try to read the paper as he approached Simmons.

The officer approached Simmons and asked for his identification, registration, and proof of insurance. Simmons provided a state identification card, but no registration. Simmons was arrested after a LEIN check revealed his driver's license was suspended. The officer subsequently searched the vehicle with the permission of the owner, who was a passenger in the vehicle, and found a firearm. It was later determined that the paper was a valid temporary license plate.

Simmons was charged with operating a motor vehicle with a suspended license and several firearms violations. Before trial, Simmons filed a motion to suppress physical evidence, asserting he was subjected to an unlawful search and seizure in violation of the United States and Michigan Constitutions. Simmons argued that the officer lacked a lawful basis for his traffic stop and that the search and seizure became unreasonable when the officer asked Simmons for his license, registration, and insurance, rather than taking five seconds to examine the paper plate affixed to the rear window of the vehicle and determine its validity. The trial court granted Simmons' motion to suppress the evidence.

The Michigan Court of Appeals reversed the trial court and held that the officer had an articulable and reasonable suspicion that there was a violation of the law and Simmons was detained for a reasonable period in order to permit the officer to ask reasonable questions concerning the violation of the law and its context.

The Court of Appeals noted, "Under the Michigan Vehicle Code, a vehicle registration plate should be attached to the rear of the vehicle. [MCL 257.225\(1\)](#). The plate must be in a clearly visible position, 'in a clearly legible condition,' and 'shall be maintained free from foreign material that obscure or partially obscure the registration information.' [MCL 257.225\(2\)](#). A violation of MCL 257.225 amounts to a civil infraction."

The officer testified that he could not see a plate before stopping the vehicle and that he could not read the very dim writing on the paper in the window when he approached the vehicle from a distance of 3 or 4 feet away. Accordingly, the Court of Appeals held the officer was justified in pulling over the vehicle for a violation of MCL 257.225(2) as the plate was not in a clearly visible position or in a clearly legible condition.

The Court of Appeals noted that even had the officer taken the time to examine the paper plate more closely to determine whether it appeared to be a valid

temporary registration plate, the plate would still have been in violation of MCL 257.225(2) because the officer could not read the plate from his car, nor could he make out the plate from 3 or 4 feet away in the dark. Thus, the temporary paper license plate was not in a clearly visible position or in a clearly legible condition.

The Court of Appeals found that the officer's questions regarding Simmons' license and registration were reasonable questions concerning the violation of the law. When Simmons handed the officer a Michigan identification card, rather than a driver's license and failed to provide registration, the officer had a justification for running a LEIN check which is a routine and generally accepted practice by police during a traffic stop. Therefore, the officer was permitted to ask questions related to defendant's identity and the vehicle registration.

Drivers may not be criminally punished for refusing to submit to a blood test based on legally implied consent to submit to them.

In [Birchfield v North Dakota](#), the United States Supreme Court considered whether a state may criminally punish a driver for refusing a blood test to determine the driver's blood alcohol content (BAC). Since the Michigan Vehicle Code does not impose criminal penalties upon a driver who refuses to submit to a blood test, this ruling does not affect Michigan police officers. Additionally, civil penalties imposed by the Michigan Vehicle Code as a result of a driver's refusal to submit to chemical testing are unaffected by the Court's ruling.

In its analysis, the Supreme Court noted that taking a blood sample or administering a breath test is a search governed by the Fourth Amendment. These searches may be exempt from the warrant requirement if they fall within the exception for searches incident to a lawful arrest. The Supreme Court reasoned that breath tests do not implicate significant privacy concerns; however, blood tests are significantly more intrusive. Balancing the privacy interests against the need for BAC testing, the Supreme Court noted that the Fourth Amendment permits warrantless breath tests incident to arrests for drunk driving. The more intrusive blood test, however, requires a search warrant or reliance on the exigent circumstances exception if applicable. States may not impose criminal penalties upon a driver who refuses to submit to a blood test based upon legally implied consent to submit to them.