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LEGAL UPDATE

MICHIGAN STATE POLICE
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First degree murder for killing a police officer is upheld as constitutional.

Defendant in this case was convicted of first degree murder in the killing of a police officer. He argued on appeal that his convictions violated equal protection of the law because "no other occupation or public service is similarly singled out for such treatment." The Court of Appeals disagreed.

The court held that, "Classifying the murder of a peace or corrections officer as first-degree murder provides a deterrent to killing individuals who regularly risk their lives in the performance of their duties as law enforcement officers. Thus, the statute is rationally related to the legitimate governmental interest of protecting peace and corrections officers in the performance of their duties." People v Clark, C/A No. 217307 (December 1, 2000)

There is no duty to retreat from one's porch.

A father and his son were involved in an altercation at the father's house. The father was standing on his porch when his son attacked him. In response, the father hit his son in the head with bat. The father was charged – the question in the appeal was whether the father should have retreated into his house if he was arguing self-defense.

Michigan recognizes that the general rule regarding self-defense is that retreat is required where it is safe to do so. The exception to this rule is that a "man is not obliged to retreat if assaulted in his dwelling." The court reviewed applicable statutes and held that for purposes of this rule the porch is included in the definition of a dwelling and there was no duty for the father to retreat from the assault when he was on his porch. People v Canales, C/A No. 221452 (December 12, 2000)

Pulling a telephone cord from the wall may fall under MCL 750.540.

During a domestic violence altercation the defendant ripped the telephone cord out of the wall, rendering the telephone inoperable and preventing the victim from calling the police. Besides domestic violence second offense, the defendant was charged under MCL 750.540, which prohibits a person from willfully and maliciously preventing another person from sending any authorized communication over a telephone or telegraph line.

The circuit court dismissed the charges but the Court of Appeals reversed and reinstated the charges. "By virtue of defendant's actions, the complainant was unable to send an authorized communication over a telephone line controlled by a telephone company doing business in the state. … Further, we do not find the homeowner's responsibility for telephone lines within the residence dispositive on this issue because such ownership and control has, at other times since the statute was enacted, been with the telephone and telegraph companies. The clear purpose of the statutory provision at issue is to prohibit interference with 'the sending, conveyance or delivery' of telephone and telegraph communications." People v Hotrum, C/A No. 220693 (December 26, 2000)

Any mention of taking a polygraph by a witness may require a mistrial.

During a trial for murder, the prosecutor attempted to rehabilitate a witness after defense questioning

by inquiring why the jury should believe her testimony. The following exchange occurred;

Q. Okay. So, then, why should we believe you?

A. That's up to you. I took a lie detector test.

The jury found the suspect guilty of first-degree murder. The Court of Appeals reversed the conviction based on the witness statement regarding the polygraph.

"We believe that a sufficient possibility existed that the jury may have resolved the credibility issue by reference to the polygraph testimony. Where the reference to the polygraph test was brought out by the prosecutor, not as a matter of defense strategy, and where the key prosecution witness, who was involved in the crime and was the crucial witness against defendant, gave a responsive answer to the prosecutor's question that was posed with the intent of bolstering the witness's credibility and was later repeated before the jury during deliberations, we believe that prejudice to defendant occurred." People v Nash, C/A No. 208799 (December 26, 2000)

Failure to leave a copy of an affidavit is grounds for suppressing the evidence seized.

In this case defendant's ex-girlfriend reported to police that defendant was growing marijuana in his house. A search warrant was obtained and executed. Seventy-five plants were discovered. After the warrant was executed, the officers left a copy of the warrant but, on the advice of the prosecutor, did not leave a copy of the affidavit establishing the probable cause.

The Michigan Court of Appeals suppressed the evidence based on the 1925 Michigan Supreme Court case of People v Moten, 233 Mich. 169 (1925), which held that facts establishing probable cause must be left at the searched residence. The Court of Appeals held that Moten is still good law and must be followed. This issue has been appealed to the Michigan Supreme Court for review. Consequently, watch for further developments in this area. People v Chapin, C/A No. 226419 (December 26, 2000).

Fifteen-year felony for training an animal to fight where the animal kills a person is constitutional.

A person was killed by two pit bulls. The owner of the animals was in jail at the time of the incident but a witness testified that she had seen the owner train the dogs to fight two months after he purchased them. He was charged under MCL 750.49(10), which creates a fifteen-year felony for a person who trains a dog to fight when that animal subsequently kills another person.

The owner argued that the statute was unconstitutionally vague thus charges should be dismissed. The Court of Appeals disagreed. "In sum, we conclude that § 10 of the statute is not unconstitutionally vague. It clearly provides notice and fair warning to those who would own animals trained or used for fighting that they do so at their own peril; they may be held criminally liable if their animal kills a person." People v Beam, C/A No. 219496 (December 26, 2000)

CCW does not apply to double-edged knives made from conchoidal fracturing.

P.A. 343 of 2000 MCL 750.222a

Knives made by "conchoidal fracturing" (breaking of stone), such as stone knives and arrowheads, are generally not considered weapons under the CCW statute. However, if the stone weapon is used with criminal intent, charges may still be brought, such as "carrying a dangerous weapon with unlawful intent," "felonious assault," or other assault charges.

Note: A stone weapon can still be considered under the CCW statue if transported in a vehicle, unless the item is in a container and inaccessible to the driver.

To review additional legislative updates see the Michigan State Police web page at www.msp.state.us/division/academy.