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# LEGAL UPDATE

**MICHIGAN STATE POLICE**
**TRAINING DIVISION**
Legal Training Section
(517) 322-6704

***One count of carjacking occurred where there were two occupants.***

A subject parked his car and left his friend inside. As he returned defendant approached him and brandished a gun at him. He pointed the gun also at the passenger and ordered her out. He then drove off with the car. The Court of Appeals held that he could be convicted of two counts of carjacking because there were two victims. The Michigan Supreme Court reversed.

HELD – "This case presents the question whether defendant may be convicted twice of carjacking, M.C.L. § 750.529a, one conviction being based on the theft from the driver of the vehicle and the other conviction being based on the theft of the same vehicle from the passenger. We hold that defendant committed only one carjacking offense." Interested side note is that court made a distinction between armed robbery and carjacking. For armed robbery the focus is on the victims. Carjacking focuses on a particular type of property where as armed robbery focuses on the person assaulted and robbed. People v Davis, MSC No. 121668 (April 8, 2003)

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***False police report may apply to false details about a crime.***

The defendant in this case called 911 to report that he had been carjacked by four unknown black males who had been armed with a pistol and baseball bat. He also reported that the subjects had taken his wallet, a gold chain and a gold ring. The vehicle was found about an hour later and after a brief chase the driver was arrested. The responding officer from the beginning questioned the validity of the defendant's claim that he had been carjacked. The subject did not live in the area and could not explain why he was there. He also appeared to be hostile and aggressive and there were no physical injuries on the subject. Later, the subject admitted that he had not been completely truthful about the incident, "beginning with the location." He informed the detective that he had lied about the location of the incident because he was a cocaine user and was in front of a crack house when his car was stolen buying drugs and he did not want to cops to know.

HELD – "The issue in this present case centers on whether lying about details concerning a crime constitutes a false report of the commission of a crime. The statute prohibits making a false report of 'the act of committing or perpetrating' a crime. Thus, the plain language of the statute is not limited to only those situations where no crime has been committed; it also applies where one reports false details about the crime. Because defendant reported false details about the crime, he can be convicted under the statute." People v Chavis, MSC No. 120112 (April 8, 2003)

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***Charges for felony murder could be brought against a mother who left her children locked in a car.***

The mother in this case left her two children locked in a car for 3 ½ hours on a hot day in July. When she returned both children where dead. She was charged with felony murder with the underlying felony being child abuse in the first degree.

HELD - Felony-murder is essentially second-degree murder, elevated by one of the enumerated felonies. First-degree child abuse

is one of the felonies enumerated in MCL 750.316(b)(2).

HELD – "We must determine whether the prosecution presented sufficient evidence during the preliminary examination to support a finding of probable cause for first-degree child abuse. Having already concluded that the crime requires specific intent, the primary question is whether defendant specifically intended to seriously harm her children, MCL 750.136b(2)."

Here, although defendant stated that she did not intend for the children to die, her self-serving statement obviously does not end the inquiry. The evidence indicated that defendant left her children in a hot car for approximately 3½ hours. In fact, regardless of the weather, leaving the children unattended in a car for such a long period of time raises considerable doubt as to whether she was merely negligent. In addition, although defendant's statement suggested that she might not have known that the children were at risk, it is noteworthy that the evidence also suggested that she rolled down at least one of the car windows about an inch and one-half. These acts belie her claim of ignorance of the risks. Accordingly, there was sufficient circumstantial evidence from which a jury could infer the requisite intent for first-degree child abuse. People v Maynor, C/A No. 244435 (April 8, 2004).

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***For armed robbery the forceful act must occur at the time of the taking.***

Defendant in this case entered a store and stole a telephone. Store loss prevention employees observed defendant's conduct and followed him to the parking lot. When confronted in the parking lot, defendant struggled with a loss prevention employee. The employee allowed defendant to drive away when he saw that defendant had a knife, and thereafter the employee realized that he had sustained a cut on the hand.

HELD – "Because defendant used a knife against store employees to effectuate his escape from the parking lot, rather than prior to or contemporaneous with, the taking of the telephone from inside the store, insufficient evidence was introduced at trial to support a conviction of armed robbery pursuant to MCL 750.529." People v Scruggs, C/A No. 225337 (April 15, 2003). More appropriate charges would be retail fraud and felonious assault.

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***"Confessing to all charges would be in your best interest" is not a promise of leniency.***

During an interview a detective informed the witness that if there were any other B and E's that he should know about that it would be in his best interests to let him know right now so everything would be taken care of at one time. However, defendant stated the detective had actually promised that if he admitted to all the B and Es he would only be charged with one, and that his admissions should be suppressed as they were made as a promise of leniency. The court found the officer to be more credible.

HELD – "Defendant was advised of his Miranda rights, given the waiver form to read, and then signed the waiver. One portion of the waiver form stated that no promises or threats had been made and no pressure or coercion had been used against defendant. The detective testified that defendant never indicated any confusion regarding his rights. Defendant made no allegations of threats, pressure, or coercion other than the alleged promise, nor did he appear to be under the influence of alcohol or drugs and there is no indication that he was denied sleep or food. Under these circumstances, we find that defendant's statements concerning the home invasions were made voluntarily." People v Shipley, C/A No. 2325564 (April 24, 2003)

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***Zero tolerance violation may be used to enhance an OUIL charge.***

Defendant was charged with OUIL 3rd where his previous convictions were OWI and a zero tolerance violation under MCL 257.626(6). He argued that using the zero tolerance violated his constitutional rights. The Court of Appeals disagreed and upheld the use of the prior conviction. People v Haynes, C/A No. 244327 (April 22, 2003)