JULY, 2003 VOL. 8 ISSUE 6

LEGAL UPDATE

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Premeditation requires time for a second look.

"To show first-degree premeditated murder, some time span between the initial homicidal intent and ultimate action is necessary to establish premeditation and deliberation. The interval between the initial thought and ultimate action should be long enough to afford a reasonable person time to take a 'second look.'"

HELD - "In this case, there was evidence that the victim was manually strangled. Also, there was evidence that the defendant attempted to conceal his crime by burning the victim's body." Under these facts the Court upheld that premeditation existed. People v Gonzalez, MSC No. 120363 (July 2, 2003).

Officer's subjective reason for searching is irrelevant if underlying warrant is valid and they limit their search to areas permitted under the warrant.

Defendant argued that evidence should be suppressed because auto theft officers used a search warrant for financial and tax records as a ruse to gain entry and examine his vehicles.

HELD – "As long as the warrant was valid, and the officers confined their search to areas permitted by the warrant, their subjective intent was irrelevant. The fact that auto theft investigators were involved in a search related to tax violations does not alter this analysis, provided the search was properly limited—even if the officers subjectively expected to find evidence of stolen vehicle parts." People v Wilson, C/A 232495 (July 1, 2003).

There is no VIN exception to the search warrant rule. The search for hidden VIN numbers must be based on probable cause.

While searching vehicles, detectives searched for hidden VIN numbers. The prosecution argued that there is no expectation of privacy in VIN numbers and thus the Fourth Amendment was not applicable. The Court of Appeals disagreed.

HELD – "The search must be based on probable cause that the VINs are improper. In this case there was probable cause and thus the automobile exception was applicable. An officer at the scene knew from his past experience with the 1994 Mercedes that the vehicle had once been missing several major parts, but now was completely rebuilt. He knew that defendant once reported stolen a 1995 Mercedes that used many of the same parts of the 1994 Mercedes. He knew that the cars were associated with Miami Motors, which had a history of rebuilding stripped cars with parts from stolen cars. Given these circumstances, the officer had probable cause to believe that there were stolen parts in the vehicles. The search was therefore proper under the automobile exception." People v Wilson, C/A No. 232495 (July 1, 2003).

Stopping and identifying oneself at an accident scene does not violate the Fifth Amendment, even if the driver is culpable for causing the accident.

Defendant was involved in a road rage incident with another subject. When the other vehicle was involved in a crash the defendant continued on his way without stopping and identifying himself as required by 257.617. He argued on appeal that the requirements of

257.617 violated his rights against self incrimination. The Court of Appeals disagreed.

HELD – "The disclosures of one's name, address, vehicle registration number, and driver's license required by MCL 257.617 and MCL 257.619 are neutral and do not implicate a driver in criminal conduct. Moreover, MCL 257.617 is not directed at a 'highly selective group' or a group 'inherently suspect of criminal activities,' but rather is aimed at any driver involved in an accident that results in serious personal injuries or death. Further, driving is a lawful activity and it is not unlawful to be involved in a car accident that results in serious injury. In addition, the purpose of MCL 257.617 is essentially regulatory. Thus, the disclosures mandated under MCL 257.617 and MCL 257.619 do not create a substantial risk of self-incrimination." People v Goodin, C/A No. No. 239280 (July 8, 2003).

"Misconduct in office" charges also apply to officers who criminally assault prisoners.

Defendant was a lieutenant in a police department who while on duty was notified that a prisoner had dropped dog feces on the floor of the jail. The lieutenant ordered the subject to pick the feces up but the prisoner refused. When the prisoner refused, defendant grabbed the prisoner by his shirt, pulled him out of his cell, slammed him into some lockers, and proceeded to hit him in the face, knocking him to the floor. Defendant then began striking the prisoner's arms and legs with nunchucks and pushed the prisoner's hands over the feces. The prisoner was then stripped down and placed naked back in the jail cell.

The officer was convicted of assault and battery and "misconduct in office." "To convict on the charge of misconduct in office, the prosecutor must prove that the defendant (1) is a public officer, (2) the misconduct occurred in the exercise of the duties of the office or under the color of the office, and (3) is corrupt behavior. "

HELD – "It is undisputed that defendant was a public officer and that the misconduct against the prisoner occurred in the exercise of defendant's duties or under the color of the office. Further, it is apparent that defendant's misconduct was intentional, i.e., resulted from a corrupt intent, in that his acts 'demonstrate a tainted or perverse use of the powers and privileges granted them, or a perversion of the trust placed in them by the people of this state, who expect that law enforcement personnel overseeing inmates will do so in a manner that is fair and equitable.'"

The defendant argued that if his conviction were upheld it would strike fear in police officers around the state from enforcing the laws for fear of being charged with crimes. The court replied that, "If our holding will strike fear in the hearts of police officers throughout this state so that no public officer, under color of the office, will feel entitled to behave in the egregious manner that this defendant did, it would achieve a result that will certainly benefit our criminal justice system. A badge, although a shield offering protection against the imposition of criminal and civil liability for legitimate acts attendant to the performance of official duties, is not a license to perpetrate crimes against or terrorize people during the performance of those duties. When a misguided police officer abuses or contorts the special privileges and powers afforded him or her, a public confidence is breached, resulting in a unique harm to society that threatens our system of justice." People v Milton, C/A No. 234080 (July 8, 2003).

The exclusionary rule applies to constitutional violations.

A defendant argued that a search warrant was obtained in violation of the search warrant law under MCL 780.653(B) and that evidence obtained should be suppressed.

HELD- "Where there is no determination that a statutory violation constitutes an error of constitutional dimensions, application of the exclusionary rule is inappropriate unless the plain language of the statute indicates a legislative intent that the rule be applied. People v Hawkins, MSC No. 120437 (June 30, 2003).