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LEGAL UPDATE

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A confession may be suppressed if the underlying arrest is unlawful.

Officers had reason to believe that a subject with the last name of Kaupp was involved in a murder. Without a warrant three plain-clothes detectives and three uniformed officers went to his house at approximately 3 a.m. After his father let them in, three officers went to his bedroom and woke him with a flashlight. They identified themselves, and said, 'We need to go and talk.' Kaupp said 'Okay.' The two officers then handcuffed him and led him, shoeless and dressed only in boxer shorts and a T-shirt, out of his house and into a patrol car. They stopped for 5 or 10 minutes where the victim's body had been found with the intent of confronting him with another's subject's confession. They then went on to the police headquarters where they took him to an interview room, removed his handcuffs, and advised him of his Miranda rights. Kaupp initially denied any involvement in the victim's disappearance, but 10 or 15 minutes into the interrogation, admitted having some part in the crime. He never admitted to causing the murder.

HELD – The statement was suppressed. "A seizure of the person within the meaning of the Fourth and Fourteenth Amendments occurs when, 'taking into account all of the circumstances surrounding the encounter, the police conduct would have communicated to a reasonable person that he was not at liberty to ignore the police presence and go about his business.' A 17-year-old boy was awakened in his bedroom at three in the morning by at least three police officers, one of whom stated 'we need to go and talk.' He was taken out in handcuffs, without shoes, dressed only in his underwear in January, placed in a patrol car, driven to the scene of a crime and then to the sheriff's offices, where he was taken into an interrogation room and questioned. This evidence points to an arrest. Since Kaupp was arrested before he was questioned, and because the state does not even claim that the sheriff's department had probable cause to detain him at that point, well-established precedent requires suppression of the confession unless that confession was 'an act of free will sufficient to purge the primary taint of the unlawful invasion.' Miranda warnings, alone and per se, cannot always break, for Fourth Amendment purposes, the causal connection between illegality of arrest and confession." Kaupp v Texas, SupCt. No. 02-5636 (May 5, 2003)

Subject may be convicted of felony firearm when he steals a gun during a home invasion.

Defendant could also be charged with felony firearm where he stole a firearm during the home invasion. "As a result, first-degree home invasion, where there is a larceny of a firearm during a residential breaking and entering, can be the predicate felony for a felony-firearm conviction." It also did not violate double jeopardy to charge the defendant with home invasion first degree and larceny of a firearm. People v Shipley, C/A No. 2325564 (April 24, 2003)

Indecent Exposure requires the victim to be offended.

The defendant's eight-year-old niece was taking a bath when he entered the bathroom. She asked him to leave but he refused. He then drew a picture of her, which included a depiction of her vagina and breasts. He initially pled to accosting a child for immoral purposes but the court refused to accept his plea. The prosecutor then amended the charge to indecent exposure. The lower court upheld the charge holding that indecent exposure could occur in the privacy of a house and could occur where the suspect's actions caused the victim to expose herself. The Court of Appeals reversed.

HELD – "In our view, for 'open exposure' the Legislature's aim was to punish exposures that

would be offensive to viewers, actual or potential, and not to the person exposed. Although the overwhelming majority of persons in our society would be deeply offended by the conduct in this case, we simply cannot conclude that it is punishable under MCL 750.335a." The Court also concluded that the exposure did not occur in a public place as required. "An exposure need not actually be witnessed by another person in order to constitute 'open or indecent exposure,' as long as the exposure occurred in a public place under circumstances in which another person might reasonably have been expected to observe it." People v Williams, C/A No. 240751 (May 22, 2003)

Reasonable suspicion for a Terry Stop includes collective knowledge of the police.

A Wal-Mart employee contacted a police department and reported that two men had just purchased a large quantity of pseudoephedrine tablets, lithium batteries, camping fuel and other items used to make methamphetamine. The caller provided description of the subject's vehicle and registration plate. The dispatcher informed an officer of the complaint, and that the vehicle was registered to a subject that had been in a previous meth lab explosion. Another officer relayed via radio that he had investigated the vehicle previously for the theft of anhydrous ammonia, another ingredient used in manufacturing methamphetamine. Based on this information, the officer stopped the vehicle and approached the driver who appeared to be nervous. The driver also had a knife clipped to his belt. The officer patted the driver down and felt a long skinny item in his back pocket. The officer asked the driver to remove the object and it turned out to be an item the officer recognized as being used for inhaling meth. Residue of a powdery substance was on the end. The subject was then placed under arrest and a baggie of meth was located in the subject's front trouser pocket. The defendant argued on appeal that there was not sufficient basis to stop his vehicle.

HELD – "Reasonable suspicion to stop may be satisfied by an officer's personal observations and the collective knowledge of the police. While an officer making a Terry stop must have more than a hunch, reasonable suspicion is considerably less than proof of wrongdoing by a preponderance of the evidence. The officer's knowledge of the alleged purchase of methamphetamine precursors, coupled with his contemporaneous observation of a car closely matching the description of the vehicle linked to that purchase, in addition to the information regarding the suspect's possible previous involvement in the illegal manufacture of methamphetamine, provided him with specific and articulable facts justifying the brief investigatory stop. Evidence uncovered during this stop, in turn, provided probable cause for Townsend's arrest." U.S. v Townsend, 2003 FED App. 0160P (6th Cir.)

An accidental dog bite by police K-9 falls under governmental immunity if police are engaged in proper governmental function.

Officers were investigating a felonious assault complaint where two subjects had fled the scene. A police dog was about to begin a track when a subject arrived at the scene. The officer yelled at the subject to stop. Based on this the dog ran at the subject and even though the handler ordered the dog to return the dog proceeded to bite the subject. The subject sued the police department and argued that governmental immunity did not apply to a dog bite. The Court of Appeals disagreed.

HELD – "Pursuant to M.C.L. § 691.1401(f), a 'governmental function' is an activity that is expressly or impliedly mandated or authorized by constitution, statute, local charter or ordinance, or other law. Plaintiff argues that since the police dog bit him against his handler's orders, the attack had nothing whatsoever to do with the proper exercise of the governmental function of policing. However, to determine whether a governmental agency is engaged in a governmental function, the focus must be on the general activity, not the specific conduct involved at the time of the tort. Here, it is undisputed that, at the time of the incident, defendant's police officers were investigating a reported felonious assault, a crime; thus, they were engaged in police activity--a governmental function--within the contemplation of the Governmental Tort Liability Act when the incident occurred." Tate v City of Grand Rapids, C/A No. 236251 (May 29, 2003)