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LEGAL UPDATE

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The exterior of an item that is validly seized during a pat down search may be examined without a search warrant.

During a pat down, an officer felt an object that he believed based on his training and experience to be cards of blotter acid in defendant's pocket. He removed the object and placed it on the roof of the car before completing the pat down. He then retrieved the objects, which turned out to be three photographs facing down. He turned the pictures over and observed that the photographs depicted defendant's companion in a house containing large quantities of marijuana. The police went to the house and saw similar furnishing to those in the photographs. A search warrant was obtained and fifteen pounds of marijuana were seized. The question presented was whether the officer could lawfully turn the pictures over under the plain feel doctrine.

HELD – In conducting a pat down search, an officer may seize items that the officer has probable cause to believe are contraband. Since in this case the seizure was lawful, the next question is whether the officer may lawfully turn the pictures over to examine them. The Michigan Supreme Court held the further examination of the pictures was lawful. "Once an object is lawfully seized, a cursory examination of the exterior of that object, like that which occurred here, is not, in our judgment, a constitutional 'search' for purposes of the Fourth Amendment…. We conclude that the exterior of an item that is validly seized during a pat down search may be examined without a search warrant, even if the officer subsequently learns that the item is not the contraband the officer initially thought that it was before the seizure." People v Custer, MSC No. 117390 (July 30, 2001).

The crime of making a false police report does not include giving false information regarding the details of the crime.

The defendant in this case was the victim of a carjacking. He immediately reported the crime to the police but lied as to the location of the incident because it had occurred near a crack house and he did not want the police to know why he had been in the area. He was charged with making a false police report. The Court of Appeals dismissed the charges.

HELD – "Here, the statute proscribes the intentional making of a false report of the commission of a crime. MCL 750.411a(1). The plain language of the statute provides that those who make police reports falsely claiming that a crime has been committed are guilty of making a report of a false crime. To construe the statute to encompass false information concerning the details of an actual crime would be a significant departure from the plain language of the statute. Because the false information reported by defendant in the present case did not pertain to whether a crime occurred, the conviction for filing a false report of the commission of a crime cannot be sustained." People v Chavis, C/A No. 218911 (July 20, 2001).

Mere lying to a police officer does not constitute resisting and obstructing.

Officers responded to a loud party complaint and contacted a subject who was urinating on the front lawn of a residence. The officer suspected that the subject was an intoxicated minor and asked him for his name and age. The subject stated his name was John Wesley Chippeway and that he was sixteen years old. It was later determined that the subject was in fact Mark John Vasquez and that he was seventeen years old. The prosecutor charged him with minor in possession and resisting and obstructing under 750.479. The question presented

was whether a mere lie to an officer would constitute resisting and obstructing.

HELD - In reviewing the resisting and obstructing statute the Michigan Supreme Court held that for obstruction there must be some type of physical or threatened physical conduct on the part of the defendant. "Michigan's resisting and obstructing statute does not proscribe any manner of interference with a police officer, and it also does not proscribe only conduct that poses a threat to the safety of police officers; rather, it proscribes threatened, either expressly or impliedly, physical interference and actual physical interference with a police officer. Defendant's conduct did not constitute threatened or actual physical interference. Therefore, defendant did not 'obstruct' the police officer, within the meaning of MCL 750.479, when he lied to him. Mere lies are insufficient to trigger a violation under this statute." This holding overturned a previous Court of Appeals decision. People v Vasquez, MSC No. 116660 (July 27, 2001).

Depositing money from a business transaction into a personal account may result in charges of larceny by conversion.

Defendant in this case operated a mobile home company. On four different occasions he signed a contract with buyers to sell them a home. As part of the contract he would require a partial down payment. On each occasion he would take the down payment and deposit it in his personal account rather than his two business accounts. Shortly after the transactions the company closed. The homes where not delivered and the down payments were not returned. Mason was charged with larceny by conversion but the trial court would not bind him over on the grounds that it was more of a civil complaint and not criminal. The Court of Appeals reinstated the charges.

HELD – "The evidence adduced at the preliminary examinations presents probable cause to believe that (1) the property at issue had value because it was money, (2) the money did not belong to Mason, (3) each complainant delivered the money to Mason, (4) Mason fraudulently converted the money to his own use when he deposited it in his personal bank account without completing the mobile home sales for each complainant, and (5) Mason intended to deprive the complainants of their money permanently when he ceased operating Mason Homes without refunding the money to them." People v Mason, C/A No. 219630 (July 27, 2001).

Sex Offender Registration includes youthful offenders

Defendant, as a minor, was convicted of CSC fourth and sentenced pursuant to the Holmes Youthful Training Act. After serving his sentence he requested that his name be removed from the Sex Offender Registration list. The trial court granted his motion but the Court of Appeals reversed.

"SORA provides that the term of the registration shall occur for twenty-five years from the time or registration or ten years following release from a state correctional facility, whichever is longer. There is no exception to this time frame for youthful trainee status. We cannot assume that this was an inadvertent omission by the Legislature." People v Rahilly, C/A No. 227682 (July 31, 2001).

Delivery of controlled substances includes social sharing.

Defendant purchased heroin that she shared with her boyfriend. She injected the heroin into his arm and he subsequently died. She was charged with manslaughter and delivery of a controlled substance. The jury acquitted her of the manslaughter charged but did convict her if the delivery charge. She requested the charges be dropped because delivery should not apply to social drug users. The Court of Appeals disagreed.

HELD – "Defendant's social sharing of the heroin with the decedent fell within the plain, broad scope of a 'transfer' within MCL 333.7105(1). Had the Legislature wished to authorize for social sharers of controlled substances, like defendant, lesser punishments than those applicable to commercial drug traffickers, it could have done so explicitly. To the contrary, it employed the broad term 'transfer' to define the culpable element of delivery. The plain language of MCL 333.7105(1) would encompass defendant's act of sharing her supply of heroin with the decedent." People v Schultz, C/A No. 216299 (July 20, 2001).