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LEGAL UPDATE

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There is no crime scene exception to the Search Warrant Rule.

Mr. and Mrs. Flippo were vacationing for a few days at a cabin. Mr. Flippo called 911 to report that he and his wife had been attacked. When the officers arrived, they located Mr. Flippo outside with wounds to his head and feet. They entered the cabin and discovered that his wife had been killed. The officers then secured the scene and Mr. Flippo was taken to the hospital. When investigators arrived they entered the cabin and searched for over 16 hours without a warrant. At one point, they opened a briefcase and located pictures of a man who appeared to be taking off his jeans. These pictures were entered into evidence to support the prosecutor's case that Mr. Flippo murdered his wife.

The United States Supreme Court suppressed the pictures. "This position squarely conflicts with *Mincey v Arizona, supra*, where we rejected the contention that there is a 'murder scene exception' to the warrant clause of the Fourth Amendment. We noted that police may make warrantless entries onto premises if they reasonably believe a person is in need of immediate aid and may make prompt warrantless searches of a homicide scene for possible other victims or a killer on the premises, but we rejected any general 'murder scene exception' as 'inconsistent with the Fourth and Fourteenth Amendments…'" Flippo v West Virginia, 120 S.Ct. 7 (1999).

Officers are reminded that they may conduct a search without a warrant, if they obtain valid consent. This case was sent back to the lower courts to determine if Mr. Flippo had consented. Officers are also authorized to secure the premises pending the issuance of a warrant.

A "fake" search warrant may invalidate consent.

Officers went to the defendant's house. When he opened up the door, one of the detectives opened up a leather folder to get a business card. Inside the folder was a form bearing the label of a search warrant. The officers asked to come in. The defendant stepped back and the officers entered. He was asked if there were any drugs in the house. The defendant then went to a freezer and retrieved a bag of marijuana.

The defendant testified that he believed the officers had a search warrant and that he could not refuse them the opportunity to search without his house being torn apart. Based on the testimony of the defendant and the officers, the circuit court held that the consent was not valid and suppressed the evidence. In reviewing the facts, the Michigan Supreme Court held that there was sufficient evidence to uphold the circuit court findings. People v Farrow, MSC No. 114252 (October 12, 1999)

48 hours is generally the maximum time allowed between a warrantless arrest and a judicial determination of probable cause.

The defendant in this case was held for four days without a judicial determination of probable cause justifying his arrest. On the fourth day, he confessed to the crime. The court was not impressed with this procedure.

"We emphasize to police authorities across Michigan the importance of securing a judicial determination of probable cause within **forty-eight hours** of a warrantless arrest in all but the most extraordinary situations. Finally, this decision provides a warning that statements made by an accused person during a longer detainment may well be found inadmissible for purposes of securing

a conviction at trial." Citing to County of Riverside v McLaughlin, 111 S. Ct. 1661 (1991). People v Walls, C/A No. 203626 (October 8, 1999).

Physical resistance is not required for Resisting and Obstructing charges.

Defendant was charged with R and O for refusing to cooperate with the execution of a search warrant for his blood. He was not physically uncooperative, but when asked to submit he merely stated, "No." He was informed that his refusal to cooperate would lead to R and O charges. He again stated, "No." There was no attempt to force him into compliance. The Michigan Supreme Court held that this was sufficient for R and O.

"The absence of physical evidence does not alter the fact that, if the prosecution's proofs are true, the defendant resisted and opposed Deputy Brooker's attempt to execute a search warrant issued by a magistrate of the district court. Physical resistance, threats, and abusive speech can be relevant facts in a prosecution under this statute, but none is a necessary element." People v Philabaun, MSC No. 114405 (October 26, 1999).

Escape before booking still constitutes escapes under MCL 750.197.

Defendant was picked up on a felony warrant. He was turned over to jail officials and placed in a holding cell. He asked to use the restroom and when the door opened he escaped out the open sally port door. He argued that he could not be convicted of escape because he was never admitted into jail. The Court of Appeals disagreed.

MCL 750.197(2) states, "A person lawfully imprisoned in jail or place of confinement established by law, awaiting examination, trial, arraignment, or sentence for a felony … is guilty of a felony." The court held that he was lawfully confined and that he was being held in jail pending the commencement of criminal proceedings that included arraignment, trial and examinations. People v Taylor, C/A No. 217847 (Oct. 26, 1999).

Equal protection of a law does not prevent charging only one party for CSC when both parties could be charged.

Defendant was a fifteen-year-old minor who allegedly engaged in "consensual" sexual intercourse with a twelve-year-old. He was charged with CSC 1st (sexual penetration of a person under thirteen). The twelve-year-old was **not charged** under CSC 3rd (sexual penetration of a person 13, 14, or 15 years old). The defendant argued that failure to also charge the twelve-year-old violated Equal Protection of the law. The Court of Appeals disagreed.

"This discretion over what charges to file will not be disturbed absent a showing of clear and intentional discrimination based on an unjustifiable standard such as race, religion, or other arbitrary classification." The prosecutor argued that the decision to charge was "strictly based upon the ages and vulnerability of the individuals involved." Based on this reasoning, the court held there was no equal protection violation. People v Hawley, C/A No. 215699 (November 9, 1999).

The interview room at a prison does constitute a public place for gross indecency charges.

An attorney was meeting with his client in an interview room at a prison. She owed him some money for his services and he requested a favor. She then performed fellatio on him, which was observed by a passing guard. The attorney was charged with gross indecency in a public place. He argued that the interview room was not a public place but the Court of Appeals disagreed since members of the public could have been exposed to the sexual act. People v Williams, C/A No. 215983 (September 3, 1999).

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This update is provided for informational purposes only. Officers should contact their local prosecutors for their interpretations.