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LEGAL UPDATE

MICHIGAN STATE POLICE
TRAINING DIVISION

(517) 322-6704

Officers must inform suspects that an attorney is available to them before questioning.

The defendant in this case was arrested at 7:10 am in the morning. As soon as his aunt learned about the arrest, she retained an attorney. After speaking with the attorney, the aunt called the jail and informed an unidentified male that an attorney had been retained and that the suspect should be informed that the lawyer was on his way. A phone bill admitted into evidence placed the call at 10:02 a.m. At some point the attorney did show up but there was no evidence indicating the time of arrival.

The detective testified that he brought the defendant out of the holding cell around 10:00 am. The defendant waived his rights and the taped statement began at 10:10 am. The detective testified that he had no idea that an attorney had been retained until after the statement was obtained. The Court of Appeals suppressed the statement under the *Bender* rule, which invalidates confessions that are obtained where the police fail to inform a suspect that an attorney had been retained during an interrogation.

"We see no reason why we should not apply *Bender*, *supra* to this case. As we have already explained, we believe that telephone contact was sufficient to invoke the protection of *Bender*. *Bender*, also held that the per se rule applied when a family member, not the retained attorney, made the contact with the police station…. Under *Bender*, after receiving Chamberlain's phone call, the police should have informed defendant that counsel had been retained for him and was on the way to the police station."

Even though the court suppressed the statement, they found the error to be harmless based on the substantial amount of additional evidence against the defendant and upheld the conviction. People v Leversee, C/A No. 220571 (November 21, 2000)

The United States Supreme Court invalidates drug checkpoints.

The City of Indianapolis set up vehicle checkpoints on its roads in an effort to interdict unlawful drugs. The vehicles were systematically stopped and a drug dog would walk around them while an officer asked the occupants a few questions. The Supreme Court held that this practice violated the Fourth Amendment.

"The primary purpose of the Indianapolis narcotics checkpoints is in the end to advance the general interest in crime control. We decline to suspend the usual requirement of individualized suspicion where the police seek to employ a checkpoint primarily for the ordinary enterprise of investigating crimes. We cannot sanction stops justified only by the generalized and ever-present possibility that interrogation and inspection may reveal that any given motorist has committed some crime." City of Indianapolis v Edmond, 531 U.S. _____ (2000)

A person can be convicted of OUIL causing death and involuntary manslaughter.

Defendant was involved in an accident where he crossed the centerline of M-66 and struck and killed a woman driving in the oncoming lane. The road was dry and clear and witnesses testified that immediately before the accident the defendant's vehicle was weaving erratically into the opposing lane as if nobody was controlling it. His blood alcohol was .15 percent. The jury convicted him of OUIL causing death and involuntary manslaughter. He argued on appeal that both convictions violated his rights against double jeopardy.

The Court of Appeals disagreed. "The offenses of involuntary manslaughter and OUIL causing death protect distinct societal norms, the amount of

punishment for each statute does not involve a hierarchy of offenses, and each statute requires proof of an element, which the other does not. Thus, defendant's convictions and punishments under both statutes do not violate the Double Jeopardy Clauses of the United States and Michigan Constitutions." People v Kulpinski, C/A No 220072 (October 17, 2000)

Obtaining blood results from the hospital may violate doctor patient privilege.

The defendant was charged with involuntary manslaughter in the death of her three children. The children died in a house fire, which the prosecutor argued was allegedly started when the defendant was intoxicated. To prove her negligence, the prosecutor attempted to subpoena the hospital for results of a blood alcohol test administered to the defendant on the morning of the fire. The Court of Appeals denied the subpoena on the basis of the physician-patient privilege.

The physician patient privilege protects "any information that is acquired by a physician in the course of treating a patient, as long as that information is necessary in order to treat the patient." The prosecutor argued that the privilege should not be applied to an unconscious person. The court rejected this argument. The court did recognize two exceptions to this privilege. A prosecutor may subpoena blood results from a motorist who is involved in an accident. The other is where medical personnel are required to report wounds inflicted by deadly weapons. The court refused to extend either of these exceptions to include a broad exception to all criminal cases. The ability to subpoena the results was denied. People v Childs, C/A No. 224698 (November 21, 2000)

First degree murder for killing a police officer is upheld.

The defendant in this case was convicted of first degree murder in the killing of a police officer. He argued on appeal that his conviction violated equal protection of the law because "no other occupation or public service is similarly singled out for such treatment." The Court of Appeals disagreed.

The court held that, "Classifying the murder of a peace or corrections officer as first-degree murder provides a deterrent to killing individuals who regularly risk their lives in the performance of their duties as law enforcement officers. Thus, the statute is rationally related to the legitimate governmental interest of protecting peace and corrections officers in the performance of their duties." People v Clark, C/A No. 217307 (December 1, 2000)

A person cannot be convicted of absconding on a felony bond where the underlying charge was a two-year misdemeanor offense for resisting and obstructing.

Defendant in this case pled guilty to resisting and obstructing which is a two-year misdemeanor. He later absconded on his bond and was charged under MCL 750.199a which prohibits absconding on a felony bond. The Court of Appeals reversed his conviction because R and O is a misdemeanor and not a felony. The court returned the case to the trial court for entry of a conviction of the misdemeanor offense of breaking or escaping from lawful custody under any criminal process under MCL 750.197a. People v Williams, C/A No. 224612 (November 17, 2000)

PPO violations have to be heard before the courts within 72 hours after the arrest.

MCL 764.15b(2) reads that a hearing on the alleged violation of a PPO must be held within 72 hours after arrest, unless extended by the court on the motion of the arrested individual or the prosecuting attorney.

In the present case, defendant's contempt hearing commenced more than 103 hours after his arrest and nearly ninety-three hours after his arraignment. Neither the prosecution nor defendant moved to schedule the hearing beyond the seventy-two-hour period and there was no evidence of good cause to delay the hearing anywhere in the record. The contempt charges were dismissed. Moore v Tanksley, C/A No 21110 (October 27, 2000)