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LEGAL UPDATE

MICHIGAN STATE POLICE
TRAINING DIVISION
Legal Training Section
(517) 322-6704

A statement obtained in violation of M.C.L. § 764.27 and MCR 5.934 is not subject to automatic suppression because of the violation.

Defendant, a fifteen year old, was arrested for robbery, arson and felony murder. He was taken to the police station and advised of his *Miranda* rights. A parent or guardian was not present at the time of the interview but the police had tried unsuccessfully to contact his grandmother prior to questioning. The defendant had never been arrested before and had very limited contact with the police prior to his arrest. He waived his rights and agreed to give a statement. He was questioned for 45 minutes and admitted to his involvement in the crime. He was encouraged to be truthful but was not coerced or abused during the interview. Prior to trial he requested that his statement be suppressed because he was not immediately turned over to his parents or taken before the court in violation of MCL 764.27 and that it was not voluntarily obtained. The Court of Appeals disagreed and allowed the confession.

HELD – "A statement obtained in violation of M.C.L. § 764.27 and MCR 5.934 is not subject to automatic suppression because of the violation. Rather, the violation is considered as part of the totality of the circumstances to determine whether the statement was voluntary. The factors that must be considered in applying the totality of the circumstances test to determine the admissibility of a juvenile's confession include (1) whether the requirements of *Miranda v. Arizona* have been met and the defendant clearly understands and waives those rights, (2) the degree of police compliance with M.C.L. § 764.27; MSA 28.886 and the juvenile court rules, (3) the presence of an adult parent, custodian, or guardian, (4) the juvenile defendant's personal background, (5) the accused's age, education, and intelligence level, (6) the extent of the defendant's prior experience with the police, (7) the length of detention before the statement was made, (8) the repeated and prolonged nature of the questioning, and (9) whether the accused was injured, intoxicated, in ill health, physically abused or threatened with abuse, or deprived of food, sleep, or medical attention. In the present case before questioning defendant the police attempted to reach defendant's grandmother but were unable to reach her until defendant's interview was completed. Defendant's statement was recorded, and the transcript establishes that defendant was advised of his *Miranda* rights, stated that he understood them, and waived them. The questioning was not unduly prolonged or coercive, and defendant was not abused. Although M.C.L § 764.27 and MCR 5. 934 were violated, defendant was of reasonable intelligence and had sufficient experience with the police that these violations are not controlling." People v Hall, 249 Mich. App. (2002)

Liability may occur where an officer makes an arrest after being insulted, and it cannot be shown that the officer would have made the arrest for any reason other than for retaliation.

A subject walked into the lobby of a police department to complain about his vehicle being towed. At one point, he became upset about the expenses and began to talk loudly. According to the subject, a police officer became arrogant with him and the subject called the officer an "asshole." The officer then responded by saying you cannot talk to me like that in my building. At which point the subject stated that this was America where there is freedom of speech and if the officer did not like it the officer should move to another country. The officer told him he could not talk like that in his building at which time the subject stated that if he really felt that way the officer was really stupid. At which point the officer informed the subject he was under arrest. An altercation arose and the subject had to be sprayed with pepper spray before being subdued. He was charged under a local ordinance

that prohibits creating a disturbance. The subject was acquitted of the charges and then brought a lawsuit.

HELD – "Government officials in general, and police officers in particular, may not exercise their authority for personal motives. The fighting words doctrine may be limited in the case of communications addressed to a properly trained police officer *because police officers are expected to exercise great restraint in their response than the average citizen... particular in response to real or personal slights to their dignity.* We hold that that the officer should have known that an arrest undertaken at least in part as retaliation for a constitutionally protected insult to the officer's dignity would be impermissible, *unless it could be shown that the officer would have made the arrest even in absence of the retaliatory motive.*"
Greene v Barber, 2002 WL 31487268 (6th Cir. Mich.)

Once the search is considered completed under a warrant, officers need a second warrant to reenter the property.

Officers executed a search warrant for drugs and with drug sniffing dogs searched the residence for hours. They seized money and four grams of cocaine. One agent felt very strongly that they had missed something and returned the following day to search again. This time the officers found an additional ounce of cocaine. The issue presented was whether the officer could enter the second day without a securing a second warrant.

HELD – The Sixth Circuit Court of Appeals held that a single warrant might authorize more than one entry into a premise as long as the second entry is a "reasonable continuation" of the original search. The court used as an example a case where officers obtained a search warrant for a vehicle but could not get the hood latch to open. So they returned the next day with a mechanic. The court held this to be a continuation of the original search. Officers may take as long as "reasonably necessary to execute the warrant and generally may continue to search the premises described in the warrant until they are satisfied that all available evidence has been located. Once the execution of the warrant is complete, the authority conferred by the warrant terminates." But in this case, the officers testified that at the end of the first day they had felt the search was completed. The use of the dogs and the indication of the thoroughness of the search indicates the officers completed their search on the first day and should have sought a second search warrant in order to return. United States v Keszthelyi, 6th Cir., No. 00-6630 (Oct 17, 2002)

To raise an OUIL Causing Death to a charge of Second-Degree Murder, there must be misconduct that "goes beyond that of drunk driving."

The defendant in this case became intoxicated and drove his pick up the wrong way on a busy freeway. He collided head-on with another vehicle killing a passenger. He was convicted of second-degree murder. For second degree murder under these circumstances the prosecutor must prove "the intent to do an act that is in obvious disregard of life-endangering consequences."

HELD – "Defendant knew, from a recent prior incident, that his drinking did more than simply impair his judgment and reflexes…we are satisfied that the prosecutor met its burden by showing that defendant had a recent episode of an alcohol-induced black-out while driving, but that he nonetheless drank heavily while he was out with his vehicle." People v Werner, C/A No. 226394 (December 27, 2002)

Receiving and concealing stolen property applies to a person who uses property without permission.

The defendant in this case took his ex-girlfriend's 1990 Buick. He argued that he borrowed the car, but his girlfriend testified that she did not give him permission to us the car.

HELD – MCL 750.535 requires that a defendant must have possessed stolen goods. The dictionary defines steal as "to take the property of another without permission." Based on the ex-girlfriend's testimony sufficient evidence was presented to show that the car was taken without permission and the subject could be convicted of possessing stolen property. People v Pratt, C/A No. 228081 (Dec 17, 2002).