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LEGAL UPDATE

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Concealing or storing a stolen firearm can be considered a continuing offense for purposes of the statute of limitations.

In 1993 a handgun was stolen from a house in Ottawa County. In 2001 a subject admitted to breaking into the house and stealing the firearm. He also admitted that soon after the breaking and entering he and another subject buried the gun along some railroad tracks. The subject was charged under MCL 750.535b(2), which prohibits concealing or storing stolen firearms. The court dismissed the charges on the grounds that the six-year statute of limitations prohibited the charges being brought. The Court of Appeals reversed.

HELD – "Accordingly, in light of the definitions of 'conceal' and 'store,' we conclude that the Legislature 'must assuredly have intended' that concealing or storing a stolen weapon be treated as a continuing offense. In light of the plain language of the statute, as well as the support found both in Michigan case law and case law from other jurisdictions, we hold that concealing or storing a stolen firearm can be considered a continuing offense for purposes of the statute of limitations." The Court continued and held that the prosecutor must still prove that the defendant in this case did actually store or conceal the firearm and did not merely abandoned it. This is a factual question for the jury. People v Owen, C/A No. 237316 (April 26, 2002)

Reasonable suspicion, based on totality of circumstances, is the proper standard for investigatory detentions.

KVET (a drug enforcement team) received information that defendant had purchased a round-trip airline ticket from Detroit to Corpus Christi, Texas. He was scheduled to depart from Detroit Metropolitan Airport at about 9:00 a.m. on June 21, 2000, and that he would return to Detroit Metropolitan Airport the following morning at approximately 9:00 a.m.. Because of the short duration of defendant's stay in Texas, and Corpus Christi's reputation as a "source city" for drugs, officers suspected that defendant might be involved in drug trafficking and placed defendant under surveillance.

During the surveillance he appeared nervous after leaving the plane and picking up his luggage. He entered into his car and was eventually stopped for an expired plate. After receiving a verbal warning for his expired plate the officer requested consent to search. The defendant granted consent but then withdrew prior to the search. At that point a police dog was called which indicated a positive hit in the car. A search revealed narcotics in the luggage. The defendant argued that the officers should have released him once he withdrew his consent. The Court of Appeals disagreed because the officers had "reasonable suspicion" to believe crime was afoot authorizing the two-minute delay for the dog.

The court ruled that "the totality of the circumstances created a particularized and objective basis to suspect defendant of being involved in criminal activity. "The evidence established that the KVET law enforcement team showed defendant may have been involved in drug trafficking because (1) defendant had taken a one-day round-trip flight from Detroit to Corpus Christi, a reputed source city for drugs; (2) defendant's stay in Corpus Christi was about twelve hours, most of which was during the middle of the night; (3) defendant appeared nervous from the time he disembarked from the plane until he retrieved his luggage and began his trip back to Kalamazoo, and (4) defendant retrieved two pieces of luggage, which, based on the length of his stay in Corpus Christi seemed excessive."

"In addition, after defendant was stopped for the expired plate traffic violation the officer observed that defendant was nervous throughout the duration

of the stop, lost color in his face (which got worse after he was asked to exit the car) and had twitching hands. Further, because the officer was aware that defendant had disembarked from a flight arriving from Corpus Christi and was returning to Kalamazoo from Detroit Metropolitan Airport, he knew that defendant was not being truthful when defendant stated he was traveling from the Ann Arbor area after having traveled there earlier that morning. These facts, establish under the totality of the circumstances a reasonable, articulable suspicion that defendant may have been involved in drug trafficking. Accordingly, defendant's brief detention to investigate whether he was involved in drug trafficking was proper." People v Lewis, C/A No. 231954 (April 26, 2002)

"Household" is an all-inclusive word for a family unit residing under one roof for any time other than a brief or chance visit.

In this case a police officer happened upon an automobile parked at the end of a two-track road near a river and found defendant and a fourteen-year-old girl in the back seat in a compromising position. The defendant and his wife were in the process of adopting the 14-year-old who had been living at their house for 4 months. He was charged with CSC 1 but argued that he and the victim did not live in the same household as required under the law. The Court of Appeals disagreed.

"The term household denotes more of what the Legislature intended as an all-inclusive word for a family unit residing under one roof for any time other than a brief or chance visit. The 'same household' provision of the statute assumes a close and ongoing subordinating relationship that a child experiences with a member of his or her family or with a coercive authority figure. We conclude that proof of a 'coercive authority figure' was not necessary precisely because the 'household' requirement assumes such a link between the victim and the defendant by virtue of 'the fact that people in the same household, those living together, bear a special relationship to one another." Based on the relationship and the fact that she had been staying there for 4 months the court concluded that they were part of the same household. People v Phillips, C/A No. 228315 (April 30, 2002)

Detainment for on-scene-identifications, or shows, may take such time that is reasonable.

At approximately midnight, the victim in this case drove his uncle's car to a local party store. While he was returning to the car, two black men, one taller than the other, stopped him. The shorter man hit him, while the taller man put a gun to his head. The taller man ordered him to unlock the car, which he did, and the two men proceeded to get into the car and leave. At approximately 1:20 a.m., an officer noticed a car fitting the description traveling down the road with four occupants. The car proceeded to jump a median and end up in a McDonald's parking lot. Before the car came to a complete stop, two subjects got out and ran. The officer ordered the other two passengers to get out of the car and lie down on the ground. A manhunt then ensued and the other two subjects were caught. At approximately 1:54 a.m. the victim was brought to the scene for a show up. He identified two of the subjects as those who had robbed him.

The defendants argued that too much time had elapsed between the crime and the identification. The Court of Appeals disagreed. "One of the main benefits of prompt on-the-scene identifications is to obtain reliability in the apprehension of suspects, which insures both that the police have the actual perpetrator and that any improvidently detained individual can be immediately released. Here, because the victim stated that only two males had been involved in the crime, police were confronted with the possibility that two of the four individuals apprehended from the car were not involved in the carjacking."

"Moreover, because the victim had just two hours earlier seen the perpetrators who had committed the crime upon him, it was still fresh in his mind. Hence, bringing him to the two locations where the individuals were being detained accomplished the dual purposes behind holding a prompt on-the-scene identification. The passage of almost two hours is simply not an unreasonable amount of time between the crime and the identification...under the facts presented in this case." People v Libbett, C/A No. 227619 (May 14, 2002)