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LEGAL UPDATE

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Questioning during an OUIL investigation does not necessarily require Miranda warnings.

Officers found a subject passed out in a vehicle and during the investigation they asked him a number of questions without advising him of his *Miranda* warnings. The Michigan Court of Appeals upheld the questioning that occurred prior to the arrest. "Ordinarily, routine traffic stops do not involve taking an individual into custody for purposes of *Miranda* warnings. While we conclude that prior to his arrest a reasonable person in defendant's place would have felt that he was seized within the meaning of the Fourth Amendment, we also conclude that such a reasonable person would not have believed that he was in police custody to the degree associated with a formal arrest. The testimony establishes that the questioning of defendant prior to the field sobriety test was brief. Defendant was not handcuffed or confined to the officers' patrol car while he was being questioned. While defendant was told that he was not going to be allowed to leave the scene, he was not told that this was because he was going to be arrested. Rather, the officers told defendant that they needed to conclude their investigation." The statements were admissible. *Miranda* warnings are required before custodial interrogation -- "custody" has been defined as where a subject is "under arrest" or where his or her freedom has been deprived in a "significant" way. People v Burton, C/A No. 226530 (July 5, 2002).

Robbery charges require some type of force or violence at the time of the taking.

The defendant in this case took merchandise from a Meijer's store without paying for them. Security attempted to stop him in the parking lot and the defendant attempted to flee and when stopped he assaulted one of one of the guards before being subdued. The prosecutor charged him with unarmed robbery. The Court of Appeals dismissed the charges because the subject never escaped. The Michigan Supreme Court also dismissed the charges but not for the same reason.

BETTER CHARGES – The court held, "Both the armed and unarmed robbery statutes are clear that the forceful act must be used to accomplish the taking. The force must occur contemporaneously with the taking. Larceny is complete when the taking occurs. Thus if the violence, force or putting in fear occurred after the taking, the crime is not robbery, but rather larceny or perhaps assault. In the present case the use of force or violence was not to take the property, but to retain it and escape apprehension." People v Randolph, MSC No. 117750 (July 11, 2002)

The "Castle Doctrine" applies to the dwelling and attached appurtenances, but not to outside property.

Defendant and two friends were in the backyard of defendant's house near a detached garage. An argument erupted and the defendant shot one of the friends 11 times and he subsequently died from his injuries. One witness stated the shooting occurred after the friend made a remark about the defendant's fiancée. Defendant testified that he intervened in an argument between the two friends. Seeing a "dark object" in the descendant's hand and believing it to be a gun, defendant immediately reached for his rifle that was located in the garage and shot the friend. A person may use deadly force in lawful self defense. But in Michigan, before using the self defense doctrine there is a duty to retreat. A person does not have to retreat if he is in his house at the time of the attack. The defendant argued that the jury should have heard the jury instruction that he did not have a duty to retreat because he was in his own home.

HELD – "Upon the theory that a man's house is his castle, and that he has a right to protect it and those within it from intrusion or attack, the rule is practically universal that when a person is attacked in his own dwelling he may stand at bay and turn on and kill his assailant if this is apparently necessary to save his own life or to protect himself from great bodily harm. Defendant, who was outside his home in the driveway or yard between the home and a detached garage at the time of the homicide, contends that he was wholly excused from any obligation to retreat because he was in his 'castle.' We disagree and hold that the castle doctrine, applies solely to the dwelling and its attached appurtenances." People v Riddle, MSC No. 118181 (July 31, 2002)

Open fields exception and protected curtilage.

Officers suspected that a building contained a marijuana grow operation. They proceeded to the location and saw a "No Trespassing" sign hanging on the building. They located an unpaved path used to reach an apartment complex behind the building. They walked on the path and saw a PVC pipe protruding from the side of the building at approximately two to three feet from the ground. They peered through the pipe and observed marijuana leaves. A search warrant was obtained based on the observations.

HELD - The area next to the PVC pipe at issue in this case was accessible to the public. The officers ventured onto a path apparently used to gain access to an apartment building. No gates or fences shielded the area. The area was visible from the street. The defendants argue that the path should be treated as protected curtilage, in part because there was a "no trespassing" sign on the building. However, this court has recognized that the presence of a no-trespassing sign cannot confer curtilage status on an area that otherwise lacks it. Even if "business curtilage" is a viable doctrine in this Circuit, it does not apply here. The path was, for Fourth Amendment purposes, a place which police could enter under the "open fields" doctrine. Therefore officers were lawfully present when they made their observations from the pathway. U.S. v Elkins, 2002 FED App. 0262P (6th Cir.)

A prevailing claimant in a forfeiture action is not responsible for towing and storage fees.

The question presented in this case was whether a prevailing claimant/owner of a forfeiture action can be held liable to pay the towing and storage fees associated with the action. In this case the officers seized a 1987 Mercury on the basis of probable cause to believe that it was subject to seizure under the narcotics forfeiture laws. The court dismissed the forfeiture proceedings but a separate hearing was held on the towing and storage fees.

HELD – "Because the drug forfeiture statutes plainly do not authorize the assessment of towing and storage costs against prevailing claimants in a drug forfeiture action, we conclude that the circuit court correctly ordered that the claimants had no responsibility for towing and storage fees." People v 1987 Mercury, C/A No. 229305 (August 23, 2002)

Use of drugs is no defense to criminal activity unless it was a specific intent crime and the defendant had an unforeseeable reaction to medication or other legal substance – MCL 768.37

Except as provided in subsection (2), it is not a defense to any crime that the defendant was, at that time, under the influence of or impaired by a voluntarily and knowingly consumed alcoholic liquor, drug, including a controlled substance, other substance or compound, or combination of alcoholic liquor, drug, or other substance or compound.

It is an affirmative defense only to a specific intent crime, for which the defendant has the burden of proof by a preponderance of the evidence, that he or she voluntarily consumed a legally obtained and properly used medication or other substance and did not know and reasonably should not have known that he or she would become intoxicated or impaired.

As used in this section: "Consumed" means to have eaten, drunk, ingested, inhaled, injected, or topically applied, or otherwise introduced into the body. "Controlled substance" means that term as defined in section 7104 of the public health code, 1978 PA 368, MCL 333.7104.