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LEGAL UPDATE

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Failure to leave copy of affidavit does not require suppression of the evidence seized.

After executing a search warrant, officers left a copy of the warrant and a copy of the tabulation but did not leave a copy of the affidavit. MCL 780.655 requires that a copy of the warrant along with an attached affidavit must be left at the residence after execution of a warrant. The Court of Appeals suppressed the evidence seized under the warrant because of the officers failure to leave the affidavit. The Michigan Supreme Court reversed.

"We are unable to discern any legislative intent that a violation of the technical requirements of MCL 780.655 result in the suppression of evidence obtained pursuant to a valid search warrant. Moreover, such a result would be particularly unwarranted in the instant case, where there has been no police misconduct and where, therefore, the deterrent purpose of the exclusionary rule would not be served. We therefore hold that the trial court and the Court of Appeals erred in applying the exclusionary rule as a remedy for this statutory violation."

This case overturns two recent Court of Appeals decisions that did require the evidence to be suppressed. If officers do not want to leave a copy of the affidavit, they should seek a suppression order from the court under MCR 8.119(f). People v Sobczak-Obetts MSC No. 115890, (May 1, 2001)

The "public safety" exception for Miranda applies to an officer asking general questions as to the whereabouts of weapons.

Officers obtained an arrest warrant for Mr. Attebury after he assaulted his wife with a pistol. Prior to going to his house, they also received information that he was he was suicidal and homicidal. He was arrested at his home as he was leaving the shower. While he was getting dressed, the officers asked him if there were any weapons in the house and he responded, "Not at this time." The officer than asked him where the weapon was that was used in the assault and he indicated that it was at his brother's house. At no time prior to this conversation were Miranda rights advised. The questioned presented was whether the statement about the location of the gun should be suppressed under Miranda. The Michigan Supreme Court applied the public safety exception to Miranda warnings to this case and found the statement to be admissible.

"Defendant easily could have hidden the weapon in one of the dresser drawers to which he had immediate access. The officers' initial attempts to ascertain the location of the gun were directly related to an objectively reasonable need to secure protection from the possibility of immediate danger associated with the gun. Moreover, the pre-Miranda questioning in the present case related solely to neutralizing this danger. The officers only asked about the whereabouts of the gun and not other broader questions relating to investigation of the crime. Here, once the officers were satisfied that the defendant posed no immediate threat of danger to them, they informed the defendant of the Miranda rights and began their general investigation."

"In sum, we hold that the officers were justified in foregoing immediate adherence to the Miranda rule, given the exigencies of the situation in defendant's apartment at the time of his arrest." People v Attebury, MSC No. 115225 (April 24, 2001)

A felon in "possession of a firearm" may also be charged with "felony firearm".

Defendant was charged with "felon in possession of a firearm" and "possessing a firearm" during the commission of a felony. He argued that those two

charges would violate his rights against double jeopardy. The Court of Appeals disagreed. "Because defendant's felon in possession charge unquestionably does not constitute one of the felony-firearm statue's explicitly enumerated exceptions, we conclude that the Legislature clearly intended to permit a defendant charged with felon in possession to be properly charged with an additional felony-firearm count." People v Dillard, C/A No. 227148 (May 22, 2001).

Statute of Limitations - Public Act 6 of 2001 MCL 767.24 (May 2, 2001)

The following is the new statues of limitations for crimes in Michigan.

(1) An indictment for murder, or criminal sexual conduct in the first degree, or a violation of MCL 750.200 to 750.212a, (explosives) that is punishable by life imprisonment may be found and filed at any time.

(2) An indictment for a violation or attempted violation of MCL 750.145c, 750.520c, 750.520d, 750.520e, and 750.520g, (child pornography and CSC) may be found and filed as follows:

> (a) Except as otherwise provided in subdivision (b), an indictment may be found and filed within 10 years after the offense is committed or by the alleged victim's twenty-first birthday, whichever is later.
>
> (b) If evidence of the violation is obtained and that evidence contains DNA that is determined to be from an unidentified individual, an indictment against that individual for the violation may be found and filed at any time after the offense is committed. However, after the individual is identified, the indictment shall be found and filed within 10 years after the individual is identified or by the alleged victim's twenty-first birthday, whichever is later.

(3) An indictment for kidnapping, extortion, assault with intent to commit murder, attempted murder, manslaughter, conspiracy to commit murder, or first-degree home invasion shall be found and filed within 10 years after the offense is committed.

(4) All other indictments shall be found and filed within 6 years after the offense is committed.

(5) Any period during which the party charged did not usually and publicly reside within this state is not part of the time within which the respective indictments shall be found and filed.

The legislature intends that the extension or tolling, as applicable, of the limitations period provided in this amendatory act shall apply to any of those violations for which the limitations period has not expired at the time this amendatory act takes effect.

Where two parties are drag racing and one strikes another car, both are "involved" in the accident.

Two brothers were drag racing on a public roadway. One of the drivers failed to stop at a stop sign, striking another vehicle. A person died as a result of the crash. The parties went to the hospital and blood was drawn for medical purposes. The prosecutor subpoenaed both brother's blood results under MCL 257.625a(6)(e) which allows a prosecutor to subpoena blood results of a person "involved" in an accident. The defendant argued on appeal that he was not "involved" in the accident as required under the law because he never came into contact with either of the other two vehicles. The Court of Appeals disagreed.

"Kyall Aldrich clearly played a part in the accident despite the fact that his vehicle did not strike or come into contact with the Musicks' vehicle. The prosecutor presented evidence to indicate that in the seconds prior to the accident, defendant's vehicles continued to be engaged in a high-speed drag race. In fact, in the seconds before the collision, defendants' vehicles were speeding along side by side down Roosevelt Road, thereby occupying the whole roadway including the lane reserved for oncoming traffic. Even though Kyall's vehicle did not run the stop sign at the intersection of Roosevelt and Hemlock Roads, he was involved in the accident because his conduct was connected to the accident in a natural and logical manner." People v Aldrich, C/A No. 216403 (May 18, 2001).