JULY 2000 VOL. 5 ISSUE 6

LEGAL UPDATE

MICHIGAN STATE POLICE
TRAINING DIVISION

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Search subsequent to arrest includes searching the casing surrounding the gear shifter.

The defendant was pulled over for speeding. He was unable to produce a driver's license and was arrested. The officer then searched the passenger compartment of the car and in the process snapped out the casing surrounding the bottom of the gear shifter. Drugs were discovered. He argued on appeal that the officer conducted an illegal search. The Court of Appeals disagreed.

"We find that the area beneath the gear shifter was a container within the passenger compartment of defendant's car and was subject to search under *Belton*. The search did not exceed the scope of a search incident to an arrest and the trial court erred in suppressing the evidence." *People v Eaton*, C/A No. 218815 (June 13, 2000).

For a Miranda waiver, the courts will evaluate two prongs. First, was the waiver voluntarily made, and second, was it knowingly and intelligently waived.

The defendant flagged two officers down and blurted out that he had just confessed to a 911 operator that he had killed his mother. The officers advised the subject of his *Miranda* rights, which he waived and explained in detail how he had killed his mother. He was then transported to the station where he was again advised of his *Miranda* rights and gave a detailed account on how he had killed his mother. Later investigation revealed that his mother had been killed nine years earlier. Prior to trial on the charge, the defendant was evaluated and one doctor indicated that he was delusional and believed that God controlled the police and would set him free if he confessed. Another doctor disagreed with this analysis and yet another stated that he knew the police would put him in jail, but due to his delusions was unable to use that information and relate it to his own situation.

The Michigan Supreme Court applied a two-prong test as to the waiver of *Miranda* rights. The first prong is whether or not the waiver was voluntarily made. "Thus, whether a waiver of *Miranda* rights is voluntary depends on the absence of police coercion." The waiver in this case was completely voluntary. The next prong to evaluate is whether the waiver was knowingly an intelligently made.

A knowing and intelligent waiver of *Miranda* rights does not equate with a wise or lawyer-inspired decision to waive those rights. "Rather, the only inquiry with regard to a 'knowing and intelligent' waiver of *Miranda* rights is whether the defendant understood 'that he did not have to speak, that he had the right to the presence of counsel, and that the state could use what he said in a later trial against him.'"

The Michigan Supreme Court held that the defendant's waiver of rights was proper. "The trial court erred as a matter of law in concluding that defendant's claimed delusional belief that God would set him free prevented him from knowingly and intelligently waiving his *Miranda* rights. Moreover, there is no evidence that, 'at the time the warnings were given and during the subsequent questioning, defendant manifested expressly or by implication from his words and actions any lack of comprehension of what was said to him or of what was occurring'" *People v Daoud*, MSC No. 113994 (July 20, 2000).

The United States Supreme Court rules that Miranda is Constitutionally based.

Soon after the *Miranda* decision was released in 1966, Congress passed a law that tried to overturn it. The law was largely ignored and not applied until the Fourth Circuit overturned a conviction

based on the law. The United States Supreme Court was then forced to decide if *Miranda* should be overturned.

'In sum, we conclude that *Miranda* announced a constitutional rule that Congress may not supersede legislatively. Following the rule of stare decisis, we decline to overrule *Miranda* ourselves." It appears the warnings are here to stay. *United States v Dickerson*, 120 S. Ct. 2326 (2000).

Mental anguish required for 1st Degree CSC may include threats and being forced to bargain.

A woman was kidnapped by a man she had been dating. During a lengthy period of time, he sexually assaulted her a number of times. During one episode, he told her that he was going to deliver her to his Mafia connections, and the victim believed him. The court held this threat was sufficient for finding mental anguish.

During another incident, the suspect told the victim that if she "behaved" he would take her home the next morning. Twenty minutes later she was asked to perform oral sex on him. The victim completed the act under the thought that she was bargaining for her freedom. The court held that conditioning release on performing a sexual act was sufficient cause for showing mental anguish. *People v Mackle*, C/A No. 204299 (June 30, 2000).

Michigan Supreme Court rules on police chases.

The Michigan Supreme Court recently reviewed two police chase cases where the vehicle being chased lost control and a passenger in the vehicle was killed. In the process of deciding the case, the Court reexamined and overturned the *Fiser v Ann Arbor* and *Rogers v Detroit* decisions.

"Thus, the police owe a duty to innocent passengers and pedestrians but not to passengers who are engaged in encouraging or abetting the fleeing. If an innocent person is injured as a result of a police chase because the police physically force a fleeing car off the road or into another vehicle that person may seek recovery against a governmental agency pursuant to the motor vehicle exception to governmental immunity. Plaintiffs in the cases at bar do not have causes of action against the City of Detroit under this exception because the injuries did not result from the police physically hitting the fleeing car or physically causing another vehicle or object to hit the fleeing car or physically forcing the fleeing car off the road or into another vehicle or object."

"Innocent persons who are injured as the result of police chases may sue an individual police officer only if the officer is "the proximate cause" of the accident, i.e., the one most immediate, efficient, and direct cause of the accident. Because the officers in the cases at bar were not "the proximate causes" of the injuries, the plaintiffs have no cause of action against the officers. *Robinson v Detroit*, MSC No. 110360 (July 18, 2000).

Warrantless arrest authority includes misdemeanors punishable by imprisonment for more than 92 days not committed in the officer's presence.

On August 21, 2000, MCL 764.15 will allow peace officers to make custodial arrests on misdemeanors punishable by *more than* 92 days based on reasonable cause (prior to this amendment, a police officer could only arrest on misdemeanors committed in his or her presence). Such reasonable cause can also be based on positive information from another police agency. So as not to be confused, arrests for misdemeanors *over* 92 days now have the same standard as a felony.

Officers will also be able to make an arrest for *any* misdemeanor committed on school property as long as they have reasonable cause. P.A. 208 of 2000.

A spouse can voluntarily testify against his or her spouse in criminal proceedings.

On October 1, 2000, the spousal privilege law will change so that the testifying spouse can consent to testify against his or her spouse in criminal proceedings. Currently, the spouse being charged holds the privilege. P.A. 182 of 2000.

An ice shanty with a value of $100.00 or more has been added to the unlawful entry statute. MCL 750.115. P.A. 148 of 2000.