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LEGAL UPDATE

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Thermal Imaging violates the Fourth Amendment unless there is a search warrant.

Officers flew a helicopter over a defendant's residence, and with the use of a thermal imager, were able to determine that the garage roof and side wall were relatively hot and the overall house was substantially warmer than neighboring houses. Officers used this information along with additional information to obtain a search warrant. The search warrant indicated that the heat was consistent with the high-intensity lamps typically used for indoor marijuana growth. The United States Supreme Court held that the use of the thermal imager violated the Fourth Amendment without a warrant.

"Where the Government uses a device that is not in general public use, to explore details of a private home that would previously have been unknowable without physical intrusion, the surveillance is a Fourth Amendment 'search' and is presumptively unreasonable without a warrant. Thus, obtaining by sense-enhancing technology any information regarding the home's interior that could not otherwise have been obtained without physical intrusion into a constitutionally protected area constitutes a search at least where, as here, the technology in question is not in general public use." Kyllo v United States, Sup Ct. No. 99-8508 (June 11, 2001)

Rioting includes actions aimed at police officers.

During a KKK rally, defendant and five others ran up the stairs of city hall and threw rocks at the police and the building. The circuit court dismissed the charges of rioting because the statute requires a causing of public terror or alarm and that the police were not the public. The Court of Appeals reversed.

"The riot statute does not require that the violent conduct at issue be directed toward the public at large. The evidence established that defendants acted in concert with several others to engage in violent conduct, which caused or created a serious risk of causing public terror or alarm. Ample evidence also established probable cause that each defendant participated in the rush toward police and in throwing projectiles." People v Kim, C/A No. 222523 (May 4, 2001)

Officers may enter a residence when they reasonably believe that a person within is in need of immediate aid.

Officers were dispatched to an open 911 call of a domestic in progress that possibly involved guns and knives. As the officers approached they knocked on the door but no one answered. They tried to gain entry but the door was locked. Inside they heard a lot of "wrestling or moving around." A woman then answered the door and the officers entered. Once inside they observed the defendant in the back bedroom and secured him. They then made a protective sweep through the residence and observed cocaine on the kitchen floor, front room, and on a tray in the bedroom. The Court of Appeals upheld the entry and the seizure of the drugs.

Police may enter a dwelling without a warrant when they reasonably believe that a person within is in need of immediate aid. They may not do more than is reasonably necessary to determine whether a person is in need of assistance, and to provide that assistance. "The police in this case had an unambiguous dispatch identifying defendant's home as the scene of a serious domestic disturbance. In addition, although they did not see any physical injury when the woman opened the door, they heard sounds of 'wrestling' and had reason to believe there may be a gun or knives on the premises. Under these circumstances, the police had sufficient articulable facts on which to base their conclusion that someone inside defendant's home needed immediate aid." *(continued on back)*

The Court also upheld the protective sweep. "The Fourth Amendment permits a properly limited protective sweep in connection with an in-home arrest if the police reasonably believe that the area in question harbors an individual who poses a danger to them or to others. Such a search is quick and limited, and conducted for the sole purpose of ensuring the safety of police officers and other persons." People v Beuschlein, C/A No. 222317 (May 11, 2001)

Failure to look at officers may be considered as one factor to establish reasonable suspicion under the totality of circumstances.

An officer responded to a bank robbery involving two black males. The officer checked one location than drove to a nearby apartment complex because he believed that to be a good place to hide a getaway car. The officer testified that based on his experience, he was looking for more than two subjects because another person is usually involved who drives the getaway car. As he pulled into the complex a car with four black male occupants was pulling out of the driveway. The officer testified that "'As I was passing by them, I turned and looked over at them, and all four subjects looked directly ahead. They would not, any of them, look over at me.' The officer said that he found this 'very unusual' because, on the basis of his nineteen years of experience as a police officer, 'Well basically, because people always look at the cops.'" The officer saw the car within ten or fifteen minutes of the dispatch regarding the bank robbery and he passed within six to eight feet of the car when they passed by each other." The officer followed the car as it took a circular route instead of a more direct route that would have taken them directly by the bank. The vehicle was stopped and evidence of the robbery was located. The Michigan Supreme Court upheld the stop as valid.

"In sum, the police in the present case stopped a car that contained at least three people in a situation where the police were looking for two bank robbers and expecting to find a getaway driver as well. Because the car had at least two black male occupants, its occupants were consistent with the description of the bank robbers. After Deputy Elder eliminated the direction north of the bank, the car was found leaving a secluded area close to the bank (indeed, within a quarter mile) that was a logical hiding place. The occupants of the car drew further suspicion on themselves by appearing to a trained law enforcement officer to be evasive by declining to look in the direction of his marked police car as it passed close by the car. Finally, the car followed a circuitous route that avoided the site of the bank robbery before the traffic stop. While one or more of these factors in isolation may not have constituted reasonable suspicion to stop the car, under the totality of the circumstances, there was reasonable suspicion to justify the traffic stop in this case." People v Oliver, MSC No. 112341 (June 12, 2001)

A juvenile's confession is admissible if, under the totality of the circumstances, the statement was voluntarily made.

A 13 year old boy was accused of sexually touching two girls ages four and seven. The officer asked the 13-year-old and his mother to come to the station. The officer first talked to the mother and advised her of the charges. He then asked to talk to the 13-year-old, alone. The mother agreed. The officer also advised her that she could contact an attorney for her son if she wanted to. She declined. Without advising the 13-year-old of his rights, the officer interviewed him for thirty to forty minutes during which time the juvenile confessed to the charges. The Court of Appeals upheld the confession.

First, the Court held that Miranda warnings were not required because the child was not in custody and thus the statements could not be suppressed on that basis. Further, there was no claim made that either the statute or court rules pertaining to juveniles were violated. "In addition, we find that the separation of defendant from his mother, although potentially troublesome in an analysis of the voluntariness of a statement, under the totality of the circumstances here, does not merit a finding that defendant's statement was involuntary. Defendant knew his mother had consented to his talking alone with the officer and that she was readily available to him. No manipulation of defendant or his mother by the police is established by the circumstances. To the contrary, everything was done openly and with the knowledge and consent of defendant and his mother." People v SLL, C/A No. 227139 (May 25, 2001)