OCTOBER 2001 VOL. 6 ISSUE 8

LEGAL UPDATE

MICHIGAN STATE POLICE
TRAINING DIVISION
Legal Training Section
(517) 322-6704

Legal impossibility is not a defense in Michigan.

Undercover officers signed onto the Internet as a 14-year-old girl named "Bekka." The defendant contacted "Bekka" and over a period of time became very sexually explicit with her. At one point, he asked her to meet him so that they could go back to his place for the purpose of sex. While at the meeting place, he was arrested. He was subsequently charged with a number of charges including attempt to distribute obscene material to a minor. The Court of Appeals dismissed the charges due to the legal impossibility of the crimes occurring. The Michigan Supreme Court held that legal impossibility is not a valid defense in Michigan.

HELD – "The defendant in this case is not charged with the substantive crime of distributing obscene material to a minor in violation of MCL 722.675. It is unquestioned that defendant could not be convicted of that crime, because defendant allegedly distributed obscene material not to a minor, but to an adult man. Instead, defendant is charged with the distinct offense of attempt, which requires only that the prosecution prove intention to commit an offense prohibited by law, coupled with conduct toward the commission of that offense. The notion that it would be 'impossible' for the defendant to have committed the completed offense is simply irrelevant to the analysis. Rather, in deciding guilt on a charge of attempt, the trier of fact must examine the unique circumstances of the particular case and determine whether the prosecution has proven that the defendant possessed the requisite specific intent and that he engaged in some act towards the commission of the intended offense." People v Thousand, MSC No. 116967 (July 27, 2001)

Increased penalties for Construction Zone Injuries - MCL 257.601b

A person who commits a moving violation that has criminal penalties and as a result causes;

- Injury to a person working in the construction zone = 1 year misdemeanor.
- Death to a person working in the construction zone = 15 year felony.

This does not apply if the injury or death was caused by the negligence of the person working in the construction zone.

Increased penalties for traffic injuries to farm workers – MCL 257.601c

A person who commits a moving violation that has criminal penalties and as a result causes;

- Injury to a person operating an implement of husbandry on a highway in compliance with this act = 1 year misdemeanor.
- Death to a person operating an implement of husbandry on a highway in compliance with this act = 15 year felony.

An unauthorized driver of a rental car may have standing to challenge a search.

Defendant was stopped and searched while driving a rental car. His wife was listed as the sole driver. However, the defendant had reserved the car and his credit card was used to secure the vehicle. The Sixth Circuit concluded that even though he was not listed as an authorized driver he still had "standing" to challenge the search.

The following factors established "standing" in this case: "First, Smith was a licensed driver. Second, Smith was able to present the rental agreement and provided the officer with sufficient information

regarding the vehicle. Third, Smith was given the vehicle by his wife, who was listed as the authorized driver. Fourth, Smith's wife had given him permission to drive the vehicle. Fifth, and most significantly, Smith personally had a 'business relationship' with the rental company. Smith called the rental company to reserve the vehicle and was given a reservation number. He provided the company with his credit card number, and that credit card was subsequently billed for the rental of the vehicle. His wife, Tracy Smith, picked up the vehicle using the confirmation number given to Smith by the company." United States v Smith, 2001 WL 984951 C.A.6 (Aug. 29, 2001)

Sixth Circuit holds officer was "Just shy of" reasonable suspicion to detain a motorist.

During a traffic stop an officer detained two subjects while waiting for a dog to sniff the outside of the car. The reason for the detention was based on a number of factors. One was that the driver was nervous and that his passenger appeared "stoned" and had white mucus around his mouth. The vehicle was messy with food wrappers and body odor was emanating from the vehicle as though the occupants had not bathed during the duration of their trip. The Sixth Circuit upheld the lower courts ruling that these factors by themselves did not establish reasonable suspicion.

HELD – "Viewing these factors in the totality of the circumstances, we conclude that Officer Fulcher did not have a reasonable, articulable suspicion of criminal activity sufficient to detain Steven Smith after the completion of the initial traffic stop. Although the government presented several factors which could, under different circumstances, and in combination with other factors, support a finding of reasonable suspicion, under the facts of this case, they merit little, if any, weight in our analysis. … The food wrappers, soda cans and cooler in the vehicle are factors which have been given little, if any, weight by other courts considering the question of reasonable suspicion, and were consistent with Steven's travel plans. Likewise, the men's body odor receives little weight in our determination. Even considering all of the government's proffered factors as a whole, we must conclude that Officer Fulcher did not possess a reasonable, articulable suspicion that criminal activity was afoot. He was, perhaps, just shy of establishing reasonable suspicion. If he had pursued his initial hunch, and had asked additional questions regarding the driver's rental vehicle or travel plans, or if he had further investigated the passenger's condition, then perhaps he would have uncovered a discrepancy or sufficiently nervous behavior, or some other objective, reliable indication of criminal activity." United States v Smith, 2001 WL 984951 C.A.6 (Aug. 29, 2001)

For "Assault Upon an Employee of a Place of Confinement," the initial arrest must be proper.

The defendant was arrested for CCW. When he was lodged at the jail, he assaulted a guard and was charged under MCL 750.197c which prohibits a person who is "lawfully imprisoned" to assault an employee of a place of confinement. It was later determined that the arresting officers had made an improper arrest and the CCW charges were dropped. The Court of Appeals dismissed the assault charges under MCL 750.197c because the defendant had not been "lawfully imprisoned" at the time of the assault. (Note: In Michigan a citizen has the right to resist an unlawful arrest.) People v Clay, C/A No. 211768 (August 31, 2001)

Interest on returned forfeiture money is not required under MCL 600.6013, when money is ordered back to the claimant.

Police seized and attempted to forfeit a large amount of money. The case was involved in the court system for a number of years. It was eventually determined that the search, which located the money, was illegal and the money was ordered to be returned to the owner. The owner then sued for interest on the money under MCL 600.6013. The Michigan Supreme Court denied the request.

HELD – "We conclude that the order directing return of the seized funds to Wilson was not a money judgment in a civil action under § 6013. Accordingly, we reverse the judgment of the Court of Appeals and reinstate the Wayne Circuit Court's February 25, 1997, order denying interest." People v $176,598.00, MSC No. 117689 (September 25, 2001)