



MICHIGAN STATE POLICE  
**LEGAL UPDATE**  
JULY 2007

This update is published by the Michigan State Police Executive Division.  
Questions and comments may be directed to [MSPLegal@Michigan.gov](mailto:MSPLegal@Michigan.gov).  
Past editions can be found on the [Legal Resources web page](#).

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**CRIMINAL PROCEDURE**

Full citations have been omitted.

**Illegally seized property is not immune from forfeiture**

In the case of *In Re Forfeiture of \$180,975*, an officer stopped a rental car for speeding and subsequently searched the car finding \$180,975 in the trunk. The search was later found to be improper and the cash was suppressed.

However, the Michigan Supreme Court held that property can be properly forfeited despite an illegal search, as long as the forfeiture is supported by facts untainted by the search.

Essentially, this means the characteristics of the property itself will be suppressed (e.g., how it was packaged or whether drugs were detected on the money). But circumstances surrounding its existence can be used as evidence to support a forfeiture when those circumstances can be proven independently of the illegal search.

In this case, the Court upheld the forfeiture because the driver frequently rented cars, driving several hundred miles each time, but could not remember where she had gone; the driver's tax records indicated she had no income in the year she was stopped and less than \$5000 in preceding years; the stop was in a recognized drug corridor (I-94)

between Chicago and Detroit; and the driver's explanation was neither consistent nor credible.

**SEARCH & SEIZURE**

Full citations have been omitted.

**The constructive entry doctrine is not the law in Michigan, and even if it were, knocking on a door and asking someone to exit does not satisfy the doctrine**

In *People v. Gillam*, police developed probable cause to arrest the defendant for drug-related offenses. Instead of obtaining an arrest warrant, the officers went to the defendant's residence to arrest him based upon probable cause.

Three officers went to the door, knocked, and when the defendant answered, they asked him to come outside. The defendant initially refused, explaining he was on a tether and not allowed to leave his residence. After the officers repeated their request that he exit, the defendant did so and he was arrested.

After the arrest, the defendant asked to go back inside to get shoes and a coat and an officer accompanied him. Once inside, the officer observed evidence in plain view and seized it.

The defendant asked that the evidence be suppressed because the officers "constructively entered" his residence to make the arrest. He claimed that such an entry without a warrant is illegal, and therefore the evidence should be held inadmissible.

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*Constructive entry, continued...*

The general rule is: Police may not enter a residence to make an arrest without a warrant, and if they do, evidence found may be excluded. Under the doctrine of constructive entry (adopted in some jurisdictions), police are considered to have entered a residence when their conduct coerces a person to leave his or her home. In order to invoke the doctrine, the police coercion must involve "overbearing police tactics" such as threats to use force.

Here, the defendant asked the Court to hold that although the officers didn't *physically* enter his residence, they *constructively* entered through their coercive tactics. But the Court held that the "entry" must be more than knocking and asking a person to come out.

Further, and more significantly, the Court refused to adopt the doctrine as the rule in Michigan. However, the United States 6<sup>th</sup> Circuit Court of Appeals has adopted the doctrine. As a result, officers should be mindful that if a case ends up in federal court, the doctrine will apply. To avoid implication of the doctrine, officers should obtain a warrant when feasible or ensure their tactics can't be labeled "overbearing" by avoiding the explicit threat of entry or excessive shows of force (i.e., large numbers of visible officers).

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## DID YOU KNOW?

Note: The following material does not represent new law. Instead, it is intended to inform officers of infrequently used laws that might prove useful.

### Authority of police to violate state law

The duties of a police officer do not carry with them any implicit authority to violate Michigan law to carry out those duties.

When the legislature has deemed it appropriate to allow police to do things that would be illegal if a non-police officer did them, the legislature has expressly granted police that authority.

Examples of acts that would normally be illegal, but police may do lawfully include:

- Speeding to apprehend a violator ([MCL 257.632](#))
- Soliciting a prostitute during a sting ([MCL 750.451a](#))
- Possession of narcotics during a drug investigation ([MCL 333.7531](#))
- Breaking into a residence to execute a warrant ([MCL 780.656](#))

Any time an officer must violate the law in order to perform his or her duties, we suggest they review the appropriate statute, as a defense attorney might ask about it in front of a judge or jury.

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### LEGAL RESOURCES

[Municode.com](#) is a commercial web site that offers access to municipal codes from throughout the country, including criminal and traffic ordinances. The site includes a free database of codes that can be searched online. It also offers for sale print copies of codes and advanced research options.

## BACK TO BASICS

Note: The following material does not represent new law. Instead, it is intended to reinforce basic rules of law that police officers frequently apply.

### Police authority to order a person to exit a vehicle

Police officers are often faced with situations where they conduct a traffic stop and find it necessary to order a person to exit the vehicle. When the person has committed a crime an order to exit presents no legal concerns.

Problematic are those situations in which the officer does not yet know if the person has committed a crime. Michigan law does not prohibit such orders, nor does it specifically allow them.

*Continued next page...*

*Back to Basics, continued...*

The United States Supreme Court has held that officers may order drivers (*Pennsylvania v. Mimms*) and passengers (*Maryland v. Wilson*) to exit vehicles, even when the order is given solely for officer safety or investigative purposes.

Although such orders themselves are lawful, problems can arise when a person refuses to follow one. Officers may charge a person refusing to exit under one of Michigan's obstruction statutes ([MCL 750.479](#) and [MCL 750.81d](#)).

The Michigan Supreme Court has held that passive actions (e.g., verbal refusal) may support an obstruction charge (*People v. Vasquez*). However, courts (and prosecutors) will analyze such charges on a case-by-case, fact-specific basis. Accordingly, officers should ensure their incident reports thoroughly explain the reasons for an order to exit.

Ultimately, because the law is not entirely settled in this area, officers should consult with their prosecutor to determine whether they will charge a person for refusing to exit a vehicle.

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