



MICHIGAN STATE POLICE LEGAL UPDATE

No. 128

July 17, 2017

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CRIMINAL LAW AND PROCEDURE MANUAL

The third edition of *Michigan Criminal Law and Procedure: A Manual for Michigan Police Officers* is now available for purchase in print and eBook formats.

The manual is published by Kendall Hunt Publishing Co. Copies may be [ordered online](#) or by calling Kendall Hunt Customer Service at 800-228-0810.

SEARCH AND SEIZURE

The implied license to approach a home and conduct a "knock and talk" is time sensitive and the police violated the Fourth Amendment when they trespassed on the defendants' property in the predawn hours with the intent to gather information

In [People v. Frederick](#), the Michigan Supreme Court considered two cases, [People v. Frederick](#) and [People v. Van Doorne](#), which raised a common question: whether a "knock and talk" by police conducted during the predawn hours violated the Fourth Amendment.

The names of defendants Frederick and Van Doorne came up during a criminal investigation involving marijuana butter. Rather than waiting until daytime or seeking a search warrant, the police decided to make unscheduled visits to each of the defendants' homes to conduct a "knock and talk." The police knocked on Frederick's door around 4 a.m. and later knocked on Van Doorne's door around 5:30 a.m.. At both homes, everyone appeared to be asleep when the police approached and all of the occupants were surprised and alarmed by the early morning contact by police. After being advised of the nature of the investigation and being advised of their *Miranda* rights, both defendants consented to a search of their respective homes where marijuana butter and other marijuana products were recovered. Both defendants were charged with various drug offenses and both filed motions to suppress the evidence found in their homes.

The suppression motions were denied by the trial court and such denial was later affirmed by the Michigan Court of Appeals. Defendants then appealed to the Michigan Supreme Court.

In a unanimous opinion, the Michigan Supreme Court held the police trespassed when they approached the defendants' homes in the predawn hours because they exceeded the scope of the implied license to conduct a "knock and talk." Further, because the police were seeking information about suspected criminal activity when they trespassed, the subsequent searches violated the Fourth Amendment.

Citing [Florida v. Jardines](#), the Court noted that when a "knock and talk" is performed within its proper scope, it is not a search at all. The proper scope of a "knock and talk" is determined by the implied license typically granted to the public, and thus the police, "to approach the home by the front path, knock promptly, wait briefly to be received, and then (absent invitation to linger longer) leave. The Court noted that just as there is no implied license to bring a drug sniffing dog to someone's front porch (as occurred in [Jardines](#)), there is generally no implied license to knock at someone's door in the middle of the night.

After concluding that the police conduct was a trespass upon a constitutionally protected area of defendants' property (i.e. curtilage), the Court then examined whether the Fourth Amendment was implicated by applying the "information-gathering" analysis required by [United States v. Jones](#). Unless the act of trespass is conjoined with an attempt to gather information, such action is not a Fourth Amendment search. Conversely, approaching a home with the purpose of gathering information during a permissible "knock and talk" is also, standing alone, not a Fourth Amendment search. The Court determined that the information gathering requirement was satisfied in this case when the police approached each house to obtain information about the marijuana butter they suspected both defendants of possessing.

Because the approaches of defendants' homes were searches and not valid "knock and talks," and because the police did not have warrants or any other exception to the warrant requirement, the Court reversed the Court of Appeals and held the approaches violated the Fourth Amendment. The Court then remanded the case to the trial court to determine whether the defendants' subsequent consent was attenuated or sufficiently removed from the illegality to be valid.

Officers should note that questions regarding the proper scope of an implied license to conduct a "knock and talk" would depend on the specific facts and circumstances and such questions should be directed to local prosecuting officials.

This update is published by the Michigan State Police, Office of the Director, Legal Resource and Education Unit and is provided for informational purposes only. Officers should contact their local prosecutor for an interpretation before applying the information contained in this update. Questions and comments may be directed to MSPLegal@michigan.gov. Past editions can be found at www.michigan.gov/msp-legal.

CRIMINAL LAW

Michigan Penal Code amended to add the crime of aiming a beam of directed energy at an aircraft or train

Public Acts 29 and 30 of 2017, effective August 7, 2017, amended the Michigan Penal Code by adding MCL 750.43a to prohibit a person from intentionally aiming a beam of directed energy emitted from a directed energy device at an aircraft or into the path of an aircraft or a moving train.

As used in this section, “directed energy device” means any device that emits highly focused energy and is capable of transferring that energy to a target to damage or interfere with its operation. The energy from a directed energy device includes, but is not limited to, the following forms of energy:

- Electromagnetic radiation, including radio frequency, microwave, lasers, and masers
- Particles with mass, in particle-beam weapons and devices
- Sound, in sonic weapons and devices

Exempted Parties

This section does not apply to any of the following:

- An authorized individual in the conduct of research and development or flight test operations conducted by an aircraft manufacturer, the Federal Aviation Administration, or any other person authorized by the Federal Aviation Administration to conduct research and development or flight test operations
- Members of the United States Department of Defense or the United States Department of Homeland Security acting in an official capacity for the purpose of research, development, operations, testing, or training
- A person using a laser emergency signaling device to send an emergency distress signal

Penalty

A person who violates this section is guilty of a felony punishable by imprisonment for not more than 5 years or a fine of not more than \$10,000.00, or both.

FORFEITURE

Public Health Code amended to eliminate forfeiture bond requirements

Public Act 418 of 2016 amended MCL 333.7523(1)(c) of the Public Health Code to eliminate the requirement that a person post a cash bond in order to file a written claim expressing an interest in property that is the subject of a forfeiture notice required by MCL 333.7523(1)(a). All other provisions in MCL 333.7523(1)(c) were unchanged.

Officers are reminded that the written claim must be signed by the claimant and must be filed within 20 days after receipt of the forfeiture notice or of the date of the first publication of the forfeiture notice with the local unit of government that seized the property or the state, if the property was seized by the state.

BACK TO THE BASICS

Reasonable suspicion is necessary to prolong an otherwise completed traffic stop

In [People v. Kavanaugh](#), the Michigan Supreme Court reiterated the United State Supreme Court’s holding in [Rodriguez v. United States](#), that “a dog sniff is not fairly characterized as part of the officer’s traffic mission” and that while certain unrelated checks during an otherwise lawful traffic stop may be conducted, they “may not do so in a way that prolongs the stop, absent the reasonable suspicion ordinarily demanded to justify detaining an individual.”

Officers are reminded that an inchoate and unparticularized suspicion or “hunch” is not enough to rise to the level of reasonable suspicion. Absent reasonable suspicion of criminal activity based upon articulable facts and the specific reasonable inferences drawn by the officer in light of his or her experience, an officer may not prolong the detention of an individual after an otherwise completed traffic stop.