



MICHIGAN STATE POLICE LEGAL UPDATE

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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.

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SEARCH AND SEIZURE

A driver of a rented vehicle who is not an authorized driver under the rental agreement may have an expectation of privacy in the vehicle

In [Byrd v. United States](#), Byrd was driving a rental vehicle when he was stopped by police officers for a possible traffic infraction. During the course of the traffic stop, the officers learned that Byrd was not listed as an authorized driver in the rental agreement, Byrd had prior drug and weapons convictions, and Byrd admitted he had a marijuana cigarette in the vehicle. The officers asked Byrd for permission to search the vehicle, but they thought that permission was not necessary because the rental agreement did not list Byrd as an authorized driver. The officers found body armor and heroin in the trunk of the rental vehicle. It was later determined that Byrd's friend rented the vehicle while Byrd waited outside in the parking lot of the rental facility. The friend listed no additional drivers on the rental agreement, but gave Byrd the keys in the parking lot of the rental facility.

Byrd filed a motion to suppress the evidence found in the trunk of the rental vehicle. The trial court denied the motion, concluding that, because Byrd was not listed on the rental agreement, he lacked a reasonable expectation of privacy in the rental vehicle and could not challenge the search. The United States Court of Appeals for the Third Circuit affirmed.

The United States Supreme Court disagreed and held that the fact that Byrd was not an authorized driver on the rental agreement did not take away any reasonable expectation of privacy he otherwise had in the rental vehicle.

The Court rejected a per se rule that "drivers who are not listed on rental agreements always lack an expectation of privacy in the automobile based on the rental company's lack of authorization alone." The Court focused on the fact that a driver who is the sole occupant of a rental vehicle may lawfully possess and control the vehicle, which would give the driver a legitimate expectation of privacy in the vehicle because of the right to exclude others from it. The Court explained that there could be many reasons why an unauthorized driver may operate the rental vehicle in violation of the rental agreement and that a breach of that agreement alone is not a sufficient reason to hold that a driver automatically lacks a reasonable expectation of privacy in the rental vehicle.

Police officers are reminded that because vehicles are inherently mobile, a vehicle may be searched without a warrant if there is probable cause to believe there is contraband in the vehicle. In this case, the Court remanded the case to the Court of Appeals to address whether there was probable cause to search the rental vehicle. The Court also acknowledged that a thief would not have a reasonable expectation of privacy in a stolen vehicle and directed the Court of Appeals to address whether a person who intentionally obtains a rental vehicle through a fraudulent scheme also lacks a reasonable expectation of privacy in the vehicle.

VEHICLE CODE

A person observed driving in a satisfactory manner may nevertheless be prosecuted for operating while visibly impaired as long as the person's ability to drive was visibly impaired

In [People v. Mikulen](#), a police officer observed Mikulen driving "satisfactorily" but initiated a traffic stop because the vehicle had an obscured license plate. The officer observed that Mikulen had glassy, bloodshot eyes and smelled of intoxicants, and Mikulen admitted to drinking

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beer. The officer administered field sobriety tests which indicated to the officer that Mikulen was intoxicated, and Mikulen was arrested for operating a motor vehicle while intoxicated in violation of [MCL 257.625\(1\)](#). Mikulen was subsequently convicted of operating while visibly impaired (OWVI) in violation of [MCL 257.625\(3\)](#).

Mikulen appealed his conviction to the circuit court. The circuit court interpreted [MCL 257.625\(3\)](#) to require testimony by a witness who actually observed Mikulen driving in an impaired manner, and because no such evidence was submitted to the jury, the circuit court vacated the conviction.

The Court of Appeals held that [MCL 257.625\(3\)](#) only requires proof that the person's ability to operate the vehicle was visibly impaired; it does not require proof that a person was operating a vehicle in an impaired manner. The court held that a prosecutor must "present evidence describing or depicting actions, conduct, characteristics, or movements of the person during the pertinent time period, revealing an impaired ability relevant to operating a vehicle."

The court stated the focus is on whether the person's capacity to drive was impaired as could be observed by another person. The court noted that it will strengthen the prosecutor's case to have evidence of the vehicle's visible movements or the driving itself, but the statute does not require that evidence. A prosecutor may establish that a person's ability to operate a vehicle was visibly impaired by evidence of, for example, the defendant failing a sobriety test, the defendant stumbling out of a vehicle and unable to walk without falling over, or the defendant speaking incoherently or in a confused manner.

Officers are reminded OWVI is different than the violation of [MCL 257.625\(1\)\(a\)](#) (OUIL). An arrest for OUIL requires a higher level of intoxication and resulting impairment, and the prosecutor must show that a defendant's ability to operate a vehicle was "substantially" lessened.

Michigan Vehicle Code amended so that intersections without working traffic signals will soon be treated as a four-way stop

Public Act 109 of 2018, effective July 23, 2018, amended [MCL 257.649](#) of the Michigan Vehicle Code (MVC) to require a driver approaching an

intersection with a traffic control signal that does not clearly indicate the right of way or is malfunctioning to treat the intersection as a four-way stop by doing the following:

- Stop at a clearly marked stop line, or, if there is no clearly marked stop line, stop before entering the crosswalk on the near side of the intersection, or, if there is no crosswalk, stop before entering the intersection.
- Yield the right of way to all vehicles in the intersection or approaching on an intersecting road, if those vehicles create an immediate hazard when the driver is moving across or within the intersection.
- Exercise ordinary care while proceeding through the intersection.

The new four-way stop rules will not apply to the following:

- An intersection that is controlled by a traffic control signal that is flashing yellow unless certain events occur, including, but not limited to, activation by an emergency vehicle.
- A traffic control signal that is located in a school zone and is flashing yellow only during prescribed periods of time.

A person who violates [MCL 257.649](#) is responsible for a civil infraction.

Officers should note that although many drivers operate on the belief that intersections with non-working traffic control signals are treated as four-way stops, the amendment to the MVC allowing such intersections to be treated as four-way stops does not go into effect until July 23, 2018.