



MICHIGAN STATE POLICE LEGAL UPDATE

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CRIMINAL LAW AND PROCEDURE MANUAL

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

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SEARCH & SEIZURE

Persons have a reasonable expectation of privacy in their property against "drone" surveillance conducted without a warrant or pursuant to a recognized exception to the warrant requirement.

In *Long Lake Township v Maxon*, the parties were involved in a civil zoning dispute that resulted in a settlement. Later, Township utilized an unmanned aerial vehicle (i.e., "drone") to take aerial images of the Maxon property without consent or any other specific legal authorization. The images showed the Maxon property was not otherwise visible from the ground. Township used the aerial images to initiate a civil action alleging zoning violations, nuisance, and violation of the prior settlement agreement. Maxon moved to suppress the images and all evidence obtained by Township alleging an illegal search of their property in violation of the Fourth Amendment. The trial court denied the motion to suppress and Maxon appealed.

The Court of Appeals reversed the trial court and held that persons have a reasonable expectation of privacy in their property against drone surveillance and a governmental entity seeking to conduct drone surveillance must obtain a warrant or satisfy a recognized exception to the warrant requirement. In doing so, the Court noted that drone surveillance of private property is necessarily more intrusive and "qualitatively different" than the use of airplanes and helicopters permitted under *California v Ciraolo* and *Florida v Riley*, and declined to adopt a bright-line altitude test it believed would be unworkable and futile.

Instead, the Court found the use of low-altitude unmanned drones to conduct targeted surveillance of private property to be more like the use of thermal imaging devices found to be a "search" in *Kyllo v United States* when used to monitor the radiation of heat from a home, and further noted the existing recognition of a reasonable expectation of privacy and other legal protections against drone misuse as found in [MCL 259.322\(3\)](#) and [MCL 259.320\(1\)](#).

SEARCH & SEIZURE

The "community caretaking" exception to the Fourth Amendment warrant requirement does not extend to the home.

In *Caniglia v. Strom*, Caniglia was in an argument with his wife when he retrieved a handgun from their bedroom, put it on the dining room table, and asked his wife to "shoot [him] now and get it over with." The wife declined and instead left to spend the night at a hotel. The next day the wife called police to conduct a welfare check when she could not reach Caniglia by phone. Police accompanied the wife to the marital home and encountered Caniglia on the porch. Caniglia confirmed the wife's account of the argument, but denied he was suicidal. Believing Caniglia posed a risk to himself or others, police called an ambulance. Caniglia subsequently agreed to voluntarily go to the hospital for a psychiatric evaluation, but only after the police allegedly promised not to confiscate his firearms. Once the ambulance left with Caniglia, and after allegedly misinforming the wife about his wishes, the police entered the home and seized the firearms.

Caniglia sued claiming the police violated the 4th Amendment when they entered his home and seized him and his firearms without a warrant. The sole question addressed by the United States Supreme Court was whether the non-criminal "community caretaking functions" of police officers, previously recognized by the Court in *Cady v. Dombrowski* to allow the warrantless search of an impounded vehicle for an unsecured firearm, created a standalone doctrine that justifies warrantless searches and seizures in the home. In a unanimous opinion in favor of Caniglia, the Court held it does not.

Although the "community caretaking" exception recognized in *Cady* similarly involved the warrantless search for a firearm, the Court noted the "unmistakable distinction" and "constitutional difference" between an impounded vehicle and a home when it unequivocally stated that "[w]hat is reasonable for vehicles is different from what is reasonable for homes."

Officers are reminded that in the absence of a court order, search warrant, or judicially recognized exception to the search warrant rule (e.g., consent), there is no general authority to seize an otherwise lawfully possessed firearm for "safekeeping" purposes.

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