



LEGAL UPDATE

MICHIGAN STATE POLICE
TRAINING DIVISION

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The odor of marijuana may establish probable cause to search a vehicle.

During a traffic stop, an officer testified that he detected, “a very strong smell of marijuana emanating from the vehicle.” The officer further testified that he had previously participated in fifteen to twenty cases involving marijuana and was familiar with its smell. The driver denied having any marijuana. The officer then searched the car locating a brick in the trunk. The officer testified that the only basis for searching the trunk was the odor of marijuana.

The Supreme Court upheld the search. “The smell of marijuana alone by a person qualified to know the odor may establish probable cause to search a motor vehicle, pursuant to the motor vehicle exception to the warrant requirement...” People v Kazmierczak, MSC No 113452 (Feb 10, 2000)

Comment – An officer establishes he or she is “qualified” on the odor of marijuana based on his or her training and experience.

CCW statute violations apply to security guards.

Officers stopped a security guard and located a pistol lying under his front seat. He was charged and convicted of CCW. He argued that since the company he worked for was licensed under the Private Security Guard Act, he should have been charged with a misdemeanor instead of a felony. The Court of Appeals disagreed.

“We hold that the trial court did not err in refusing to reduce defendant’s felony charge to a misdemeanor under the PSGA because the legislature intended private security guards to remain governed by the laws of Michigan, and the PSGA does not create a new or separate offense for carrying a concealed weapon to be applied to

persons subject to the act.” People v Biller, C/A No 211933 (Feb 4, 2000)

Statements made to third parties that are against penal interest may be used against a codefendant.

Jermaine Beasley was convicted of murder. The key evidence against him was a statement that his codefendant, Andre Freeman, had made. Freeman had told his ex-girlfriend that he and Beasley had gone to the victim’s house to purchase drugs. At the residence they found more drugs than expected and decided to take advantage of the situation by shooting the woman and man they found there. The ex-girlfriend testified that Freeman had told her this information because he had to get it off his chest and that she was the only one he could talk to.

Beasley argued on appeal that the ex-girlfriend’s statement to Freeman was not admissible against him. The Court of Appeals disagreed. “Freeman’s statement was voluntarily given to Townsend (his ex-girlfriend), who was someone to whom Freeman would likely speak truthfully. Furthermore, Freeman sought out Townsend to initiate the making of the statement. In addition, as stated earlier, Freeman’s statement was clearly against his penal interest, and does not shift blame but makes reference to defendant only in the context of his narration of the events of the incident.” People v Beasley, C/A No. 210668 (Feb 1, 2000)

Anticipatory search warrants are held to be constitutional.

Officers intercepted a package that contained twenty-eight pounds of marijuana. They set up a delivery with an undercover officer. Prior to completing the delivery, they obtained an “anticipatory search warrant.” Under an anticipatory search warrant the probable cause does not exist at the time the judge signs the warrant but will exist if certain events occur. The warrant in

this case specifically identified what would have to occur before it would become valid. “The search was subject to the successful delivery of the narcotics which was to be carried out by an undercover police officer. Further, the affidavit clearly indicated that the warrant would not be executed unless the marijuana was successfully delivered.” Based on these facts, the court held that anticipatory search warrants are not unconstitutional per se. People v Kaslowski, C/A No 208656 (January 11, 2000)

Safety to others may justify entry without a warrant.

An officer responded to a shooting at a hotel. Upon arrival, he located a victim in the parking lot that was still responsive. When asked who shot him, the victim stated “Eric.” When asked for a last name, the victim gave no reply. When the officer asked where Eric lived, the victim stated “here” and nodded toward the hotel. The officer also observed a white van with its doors open and inside located the body of a female who apparently died from a gunshot wound. The officer recovered a red spent 12-gauge shotgun shell near the driver’s side front tire.

The officer then went to the hotel and determined that “Eric Snider” in room 412 was the only Eric registered. He went back to the victim who was being loaded in the ambulance and asked if Eric Snider was the one who had shot him and the victim stated “yes.” The officer then obtained a room key and entered room 412. No one was present, but he did observe a red 12 gauge shot gun shell that was similar to the one near the van and Eric Snider’s identification. The room was then secured and a search warrant was obtained. The warrant was executed and officers recovered the shell as well as Snider’s identification.

Officers then left the scene and informed the night clerk to call if Snider returned. At approximately 4:00 am the clerk called and stated that Snider had returned. The officers obtained the key and after knocking and getting no response, they entered and found Snider sitting on the bed holding a shot gun. He was then arrested.

The Court of Appeals upheld all three of the entries as reasonable under the Fourth Amendment. “Here, we find that Officer Passage’s initial warrantless entry into room 412 was justified under the exigent circumstances exception to the warrant requirement. He had probable cause to believe that a crime had just been committed and justification for a search of the room to prevent the destruction of any evidence, to protect the police or others, and to prevent Snider’s escape or to determine if he were wounded.” The search warrant was valid based on the officer’s observations during his initial entry.

The final entry without a warrant was also valid. “Here, the police were justified in concluding that Snider’s armed presence in the hotel endangered the lives of the other guests. Further, the police were justified in concluding that any delay in arresting Snider while obtaining an arrest warrant would be unreasonable in light of the danger that Snider posed to the other guests. Therefore, we find that there were exigent circumstances known to the police that excused them from taking time to obtain an arrest warrant. The police were confronted with what can only be classified as an emergency situation: a murder suspect, whom they had every reason to believe was armed, located in a hotel room under circumstances that very probably might put the lives and safety of the others at risk.”

People v Snider, C/A No. 203328 (January 14, 2000)

Legal Training Announcement

The State Police Training Division will be hosting a legal update on March 15, 2000. Registration forms were sent out to all agencies. For further information or additional registration forms please contact Nicole Bogard at (517) 322-6336.

Visit the Training Division Web Page on the Intranet to access other legal updates and the Michigan Compiled Laws. On the Internet go to www.msp.state.mi.us. Then go to Bureaus and Divisions, then Training Division, then Legal Updates.

This update is provided for informational purposes only. Officers should contact their local prosecutors for their interpretations.