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LEGAL UPDATE

MICHIGAN STATE POLICE
TRAINING DIVISION

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Attorney/Client privilege is not protected if there is no attempt to keep the conversation confidential.

While in a courtroom, the defendant in this case discussed issues with his attorney. The bailiff was also in the courtroom and standing six feet away when the statements were made. The bailiff was subsequently called to testify about what he overheard in the conversation. The defendant argued that the conversation was protected under the attorney/client privilege. The Court of Appeals disagreed.

"When defendant spoke to his attorney, the uniformed bailiff was in his usual position in the courtroom and his presence was obvious to all persons in the room. Situated in this public location during public proceedings, and under the scrutiny of the bailiff, defendant chose to communicate with counsel by speaking to the attorney in a manner that could be overheard by a third person rather than covering his mouth and quietly whispering or communicating in writing." Under these circumstances, the conversations were not confidential and thus not protected. People v Compeau, C/A No. 217193 (February 9, 2001)

A "spiritual" therapist may constitute a position of authority for purposes of coercion under the CSC statute.

The defendant in this case was a Reiki therapist, which is an ancient healing art that involves using various hand positions to activate internal healing. He had been working with the mother of a fourteen-year-old boy when the boy requested to also attend some of the sessions. The defendant agreed, but requested that he work privately with her son. The mother agreed. During these sessions the defendant requested the boy to touch the defendant's testicles. The boy did and the defendant talked about sexual energy.

The defendant was charged with CSC 2nd under the theory that he was in a position of authority over the victim. The Court of Appeals upheld the charges. "We find that the defendant exploited and abused his position of authority to compel an extremely vulnerable youth to engage in sexual contact. This clearly constitutes coercion for purposes of this section of the CSC II statute." People v Knapp, C/A No. 210837 (January 23, 2001)

Use of an audio tape to identify a suspect may be held to be overly suggestive if there are insufficient samples or the suspect's voice is obvious.

The victim is this case was sexually assaulted as she walked from her car to her home. She called the police immediately after the attack and reported the suspect was wearing a ski mask and a blue one-piece outfit and that she also had listened carefully to his voice. A tracking dog located the defendant two houses from where the victim lived. The police contacted the suspect who voluntarily agreed to be interviewed. The interview was taped without the defendant's knowledge. Later, the interview was played for the victim. She was told that the suspect's voice was present on the tape but was not told which voice it was. She did identify the voice as the assailant but she also admitted she could discern whom the officers were and whom the suspect was by the conversations that occurred.

The Court of Appeals suppressed the evidence because the playing of the tape was impermissibly suggestive. "Only three voices were present on the tape played to the victim. The two voices asking questions were those of the interrogating officers and the third voice answering the questions was that of the defendant. No other voices were played for comparison. Further, prior to playing the tape, the police informed the victim that the primary suspect's voice was on the tape and that two of the voices were police officers. Although the officers did not state which voice belonged to the defendant, the victim admitted that she could easily determine that the officers were the two individuals asking questions and that the person responding was the

defendant." The Court upheld the lower courts holding that dismissed the case without prejudice. People v Williams, C/A No. 221876 (February 2, 2001)

Restitution under the Crime Victim's Right Act may include unrecovered police buy money.

As part of sentencing for delivering marijuana, defendant was ordered to pay $7,650 in restitution to the NET team for the buy money that was used to set up the charges. The Court of Appeals upheld the order based on the Crime Victim Right's act. "Therefore, we conclude from the plain language of the statute, as well as from the intent behind the CVRA, that the Legislature intended to permit narcotics enforcement teams to obtain restitution of buy money lost to a defendant's criminal act of selling controlled substances." People v Crigler, C/A No 220111 (January 26, 2001)

Eavesdropping includes listening into cordless phone conversations.

During a divorce, the husband was informed that the next door neighbor had been listening into and tape recording the conversations of his wife when she was using the cordless phone. The husband took the tapes and told the neighbor to, "keep on top of things, tape and find out what is going on." The husband was charged with eavesdropping after police investigated complaints from the wife that people had information that she had only mentioned on the telephone. The question before the Supreme Court was whether the conversations could be private conversations for eavesdropping purposes because they were made on a cordless phone.

"In conclusion, although technology provides a means for eavesdropping, the Michigan eavesdropping statutes specifically protect citizens against such intrusions. Therefore, a person is not unreasonable to expect privacy in a conversation although he knows that technology makes it possible for others to eavesdrop on such conversations." People v Stone, MSC No. 114227 (January 30, 2001)

The Sixth Circuit upholds stalking statute as constitutional.

Defendant was convicted of aggravated stalking in the state courts. A Federal District Court reviewed his case and held that the stalking stated was unconstitutional because it was overly broad in that the statute could also infringe upon protected activity. The Sixth Circuit Court of Appeals reversed. "Any effect on protected speech is marginal when weighed against the plainly legitimate sweep of the statute, and certainly does not warrant facial invalidation of the statue." Staley v Jones, 2001 FED App. 0037P (6th Cir.)

Reasonable detention of a suspect, pending the issuance of a search warrant for his residence, is constitutional.

Officers assisted a woman in keeping the peace as she removed some belongings from her residence. When she came outside, she told one officer that her husband had marijuana under the couch. The officers made contact with the husband and requested permission to search the residence, but the husband refused. One officer then left to get a search warrant while the other officer waited with the husband. The husband was told that he could not enter the residence without being accompanied by the officer. A warrant was obtained and executed two hours later. Marijuana was located and the husband was charged with possession of marijuana and drug paraphernalia. The defendant argued on appeal that denying him access to the residence was an unreasonable seizure and that the evidence should be suppressed. The United States Supreme Court disagreed.

"In light of the following circumstances, considered in combination, the Court concludes that the restriction was reasonable, and hence lawful. First, the police had probable cause to believe that McArthur's home contained evidence of a crime and unlawful drugs. Second, they had good reason to fear that, unless restrained, he would destroy the drugs before they could return with a warrant. Third, they made reasonable efforts to reconcile their law enforcement needs with the demands of personal privacy by avoiding a warrantless entry or arrest and preventing McArthur only from entering his home unaccompanied. Fourth, they imposed the restraint for a limited period, which was no longer than reasonably necessary for them, acting with diligence, to obtain the warrant." Illinois v McArthur, U.S. SupCt No. 99-1132 (February 20, 2001)