



MICHIGAN STATE POLICE LEGAL UPDATE

No. 64
APRIL 22, 2008

This update is published by the Michigan State Police Executive Division. Questions and comments may be directed to MSPLegal@michigan.gov. Past editions can be found at www.michigan.gov/msp-legal.

SEARCH & SEIZURE

The arrest of a passenger justifies a search of a vehicle incident to arrest

In *People v. Mungo*, an officer lawfully stopped a vehicle and during the stop conducted LEIN checks of the driver (who owned the vehicle) and the passenger. The passenger was arrested for outstanding warrants.

After the passenger was arrested, the officer searched the vehicle incident to arrest and found an unlawfully concealed pistol, for which the driver was arrested. Prior to the search, the officer had no grounds to believe that the driver had engaged in unlawful activity or that the vehicle contained contraband.

The Michigan Court of Appeals upheld the search, noting that the search incident to arrest exception to the warrant requirement was crafted by the U.S. Supreme Court as a bright-line rule; police may search the interior of a vehicle any time they arrest an occupant. This is the rule regardless of whether the person arrested is the driver, passenger, or owner of the vehicle.

Use of e-mail to commit a crime may support a warrant to search the home of the e-mail address owner

In *United States v. Terry*, an Internet service provider intercepted child pornography sent using one of its e-mail accounts. The e-mails were eventually forwarded to federal law enforcement agents, who identified the account owner (the defendant). Pursuant to a warrant, the defendant's home was searched and his computer seized.

In seeking to suppress evidence found during the search, the defendant argued that

the warrant was not based upon probable cause because there was no link between the e-mail account and his home. Among other things, the defendant noted that his e-mail account could have been accessed from any computer, and that the agents did not have an IP address linking the e-mails to his computer.

The United States Sixth Circuit Court of Appeals disagreed with the defendant, holding that it is "plain common sense" that when child pornography is sent "from a particular individual's email account...the image is likely to be found on that individual's computer..."

The Court acknowledged that it was possible that the e-mails came from another place or were sent by another person, but it noted that "probable cause does not require near certainty, only a fair probability." In this case, a fair probability existed because the search warrant affidavit established that the e-mails were sent; the address was registered to the defendant; and the defendant had a computer at his home from which he had, at some point, accessed the account.

Lastly, the Court noted that while an IP address linking a defendant's computer to particular e-mails is useful in determining probable cause, an IP address is not indispensable.

Editor's note: As with all federal appellate cases, this case is only binding in its application to federal cases; Michigan state courts may not agree with it. However, the case has been offered because it is instructive in the absence of a similar state case.

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