



LEGAL UPDATE

MICHIGAN STATE POLICE TRAINING DIVISION

Legal Training Section
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Evidence obtained in violation of Miranda does not automatically have to be suppressed if the confession was voluntarily made.

Officers were investigating the defendant for a violation of a temporary restraining order. They also had information that he was a convicted felon and was illegally possessing a pistol. The officers proceeded to his home and arrested him for violating the restraining order. One officer attempted to advise him of his rights when the defendant interrupted, asserting that he knew his rights. The officer then asked about the pistol and defendant told him where it was. The pistol was retrieved and the defendant was indicted for possession of a firearm by a convicted felon in violation of federal law. He argued on appeal that the firearm should be suppressed as a violation of the Miranda warnings.

HELD - The United States Supreme Court held that:
(1) Failure to give suspect *Miranda* warnings does not require suppression of physical fruits of suspect's unwarned but voluntary statements;
(2) Officers' failure to give *Miranda* warnings in conjunction with restraining-order arrest did not require suppression of weapon at firearms trial, since weapon was recovered based on defendant's voluntary statement that he possessed it. U.S. v Patane, SupCt No. 02-1183 (June 28, 2004)

First confession without warning may taint second confession.

The defendant, Seibert, feared charges of neglect when her son, afflicted with cerebral palsy, died in his sleep. She was present when two of her sons and their friends discussed burning her family's mobile home to conceal the circumstances of her son's death. Donald, an unrelated mentally ill 18-year-old living with the family, was left to die in the fire, in order to avoid the appearance that Seibert's son had been unattended. Five days later, the police arrested Seibert, but did not read her her rights under *Miranda v. Arizona*. At the police station, an officer questioned her for 30 to 40 minutes, obtaining a confession that the plan was for Donald to die in the fire. He then gave her a 20-minute break, returned to give her *Miranda* warnings, and obtained a

signed waiver. He resumed questioning, confronting her prewarning statements and getting her to repeat the information.

HELD – The confession was suppressed. “*Miranda* warnings given mid-interrogation, after defendant gave unwarned confession, were ineffective, and thus confession repeated after warnings were given was inadmissible at trial.” Missouri v Seibert, SupCt No. 02-1371 (June 28, 2004).

Venue for prosecution is where the crime occurred unless changed by statute.

The victim in this case lived in Traverse City. In February 2000 the defendant used the victim's identification to obtain a loan for \$5,200 from House Hold bank in Wayne County. The violation occurred in Wayne County and it was not determined how the victim's identity was obtained. Charges for larceny by false pretense were brought against the defendant in Traverse City. The trial court dismissed the charges due to improper venue and the Court of Appeals agreed. The court held that the proper venue for larceny of false pretense was in Wayne County. People v Webb, C/A No. 246372 (September 9, 2004).

Taser law amended to include additional possible users P.A. 338 of 2004 (September 23, 2004).

Sec. 224a. (1) Except as otherwise provided in this section, a person shall not sell, offer for sale, or possess in this state a portable device or weapon from which an electrical current, impulse, wave, or beam may be directed, which current, impulse, wave, or beam is designed to incapacitate temporarily, injure, or kill.

(2) This section does not prohibit any of the following:

(a) The possession and reasonable use of a device that uses electro-muscular disruption technology by a peace officer, an employee of the department of corrections authorized in writing by the director of the department of corrections, **a local corrections officer authorized in writing by the county sheriff, a probation officer, a court officer, a bail agent authorized under section 167b,**

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a licensed private investigator, or an aircraft pilot or aircraft crew member, who has been trained in the use, effects, and risks of the device, while performing his or her official duties.....

(b) "Local corrections officer" means that term as defined in section 2 of the local corrections officers training act, 2003 PA 125, MCL 791.532.

(c) "Peace officer" means any of the following:

(i) A police officer or public safety officer of this state or a political subdivision of this state, including motor carrier officers appointed under section 6d of 1935 PA 59, MCL 28.6d, and security personnel employed by the state under section 6c of 1935 PA 59, MCL 28.6c.

(ii) A sheriff or a sheriff's deputy.

(iii) A police officer or public safety officer of a junior college, college, or university who is authorized by the governing board of that junior college, college, or university to enforce state law and the rules and ordinances of that junior college, college, or university.

(iv) A township constable.

(v) A marshal of a city, village, or township.

(vi) A conservation officer of the department of natural resources or the department of environmental quality.

(vii) A law enforcement officer of another state or of a political subdivision of another state or a junior college, college, or university in another state, substantially corresponding to a law enforcement officer described in subparagraphs (i) to (vi).

(viii) A federal law enforcement officer.

Hazing Law created - Public Act 111 of 2004
(Effective: 08/18/2004) - MCL 750.411t

(1) Except as provided in subsection (4), a person who attends, is employed by, or is a volunteer of an educational institution shall not engage in or participate in the hazing of an individual.

(2) A person who violates subsection (1) is guilty of a crime punishable as follows:

(a) If the violation results in physical injury, the person is guilty of a misdemeanor punishable by imprisonment for not more than 93 days or a fine of not more than \$1,000.00, or both.

(b) If the violation results in serious impairment of a body function, the person is guilty of a felony punishable by imprisonment for not more than 5 years or a fine of not more than \$2,500.00, or both.

(c) If the violation results in death, the person is guilty of a felony punishable by imprisonment for not more than 15 years or a fine of not more than \$10,000.00, or both.

(3) A criminal penalty provided for under this section may be imposed in addition to any penalty that may be imposed for any other criminal offense arising from the same conduct.

(4) This section does not apply to an individual who is the subject of the hazing, regardless of whether the individual voluntarily allowed himself or herself to be hazed.

(5) This section does not apply to an activity that is normal and customary in an athletic, physical education, military training, or similar program sanctioned by the educational institution.

(6) It is not a defense to a prosecution for a crime under this section that the individual against whom the hazing was directed consented to or acquiesced in the hazing.

(7) As used in this section:

(a) "Educational institution" means a public or private school that is a middle school, junior high school, high school, vocational school, college, or university located in this state.

(b) "Hazing" means an intentional, knowing, or reckless act by a person acting alone or acting with others that is directed against an individual and that the person knew or should have known endangers the physical health or safety of the individual, and that is done for the purpose of pledging, being initiated into, affiliating with, participating in, holding office in, or maintaining membership in any organization. Subject to subsection (5), hazing includes any of the following that is done for such a purpose:

(i) Physical brutality, such as whipping, beating, striking, branding, electronic shocking, placing of a harmful substance on the body, or similar activity.

(ii) Physical activity, such as sleep deprivation, exposure to the elements, confinement in a small space, or calisthenics, that subjects the other person to an unreasonable risk of harm or that adversely affects the physical health or safety of the individual.

(iii) Activity involving consumption of a food, liquid, alcoholic beverage, liquor, drug, or other substance that subjects the individual to an unreasonable risk of harm or that adversely affects the physical health or safety of the individual.

(iv) Activity that induces, causes, or requires an individual to perform a duty or task that involves the commission of a crime or an act of hazing.

(c) "Organization" means a fraternity, sorority, association, corporation, order, society, corps, cooperative, club, service group, social group, athletic team, or similar group whose members are primarily students at an educational institution.

(d) "Pledge" means an individual who has been accepted by, is considering an offer of membership from, or is in the process of qualifying for membership in any organization.

(e) "Pledging" means any action or activity related to becoming a member of an organization.

(f) "Serious impairment of a body function" means that term as defined in section 479a.