



MICHIGAN STATE POLICE LEGAL UPDATE

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CRIMINAL PROCEDURE

Full citations have been omitted.

Dying declarations do not violate the confrontation clause

In *People v. Taylor*, a shooting victim identified his assailant (Taylor) to police before his death, and officers testified regarding the statement at trial. Among other issues decided during the appeal, the Michigan Court of Appeals held that a victim's dying declaration is admissible.

Although dying declarations have long been admissible, the Court re-affirmed their admissibility in light of the U.S. Supreme Court's holding in *Crawford v. Washington* (2004). In *Crawford*, the Court tightened the rules on which type of testimonial hearsay evidence may be admitted without violating the Confrontation Clause of the Constitution.

The Court in *Taylor* held that Michigan's dying declaration rule withstands *Crawford* scrutiny.

Under the [Michigan Rules of Evidence](#), Rule 804(b)(2), dying declarations may be admissible in court despite the fact that they

constitute hearsay. Under the rules, such statements are admissible when:

1. The person making the statement is unavailable to testify¹, and
2. The case is a homicide prosecution, and
3. The person making the statement believed that his or her death was imminent, and
4. The statement concerned the cause or circumstances surrounding the impending death

Officers taking such statements should thoroughly document the circumstances surrounding the statement, paying particular attention to evidence of what the victim believed, i.e., that the victim thought death was imminent. In *Taylor*, officers and EMS personnel told the victim he wasn't going to live, so it followed that he believed death was imminent.

¹This element may seem self-evident. However, a person making a dying declaration need not actually die for the statement to be admissible. Rather, they need only to have believed they were going to die and may be unavailable for reasons other than death (e.g., in a coma).

There is no good-faith exception for faulty Title III wiretap warrants

In *United States v. Rice*, federal agents sought and obtained a wiretap warrant pursuant to Title III of the [Omnibus Crime Control and Safe Streets Act](#).

The warrant in question was obtained based upon information discovered during another wiretap, and was supported by an affidavit containing vague, and even misleading, information; Title III's procedural safeguards were not followed.

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Title III, continued...

After the trial court suppressed the evidence, the government appealed, claiming among other things that the agent acted in good faith. The U.S. 6th Circuit Court of Appeals held that no good faith exception exists in Title III cases. As a result, violations of the Act's safeguards will be subject to the exclusionary rule.

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SEARCH & SEIZURE

Full citations have been omitted.

911 hang-ups, without more, do not justify a Terry stop

In *United States v. Cohen*, officers were dispatched to a residential "911 hang-up." An officer arrived in the area within four minutes and stopped the only vehicle leaving the area of the 911 call.

The driver, who initially refused to identify himself, was subsequently arrested for an outstanding warrant and a suspended license. During a search subsequent to the arrest officers found a pistol in the vehicle.

The 6th Circuit upheld suppression of the pistol because a 911 hang-up does not provide the necessary reasonable suspicion to stop a vehicle leaving the area. The court reiterated the *Terry* rule, which only allows an investigatory stop when an officer "has reasonable suspicion supported by articulable facts that criminal activity may be afoot."

The Court likened a 911 hang up to an anonymous tip – it only provides reasonable suspicion when it contains "sufficient indicia

of reliability." Here, the officer had nothing more than a 911 hang-up – he had no information that the 911 call indicated criminal activity was afoot, nor was there any known connection between the call and the vehicle stopped.

INTERVIEW & INTERROGATION

Full citations have been omitted.

Refusal to provide a written statement after an interview does not invoke *Miranda*

In *People v. Williams*, an armed robbery suspect was interviewed after having been advised of his *Miranda* rights. At the end of the interview, he was asked to make a written statement but refused. Several hours later, another investigator re-interviewed the defendant, again after advising him of his rights.

The defendant claimed that the second interview (which played a part in his conviction) was improper because his refusal to make a written statement had effectively invoked *Miranda*.

The Michigan Court of Appeals held that "mere refusal to reduce an oral statement to a written statement does not amount to the invocation of the right to remain silent." Choosing one form of communication over another (oral over writing) is not the same as choosing silence over speech.

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USE OF FORCE

Full citations have been omitted.

When a vehicle pursuit poses a substantial and immediate risk of injury to others, it is reasonable for police to end the pursuit by forcing the suspect vehicle from the road

In *Scott v. Harris*², an officer attempted to stop a vehicle for speeding and the driver chose to flee. The pursuit was on a two-lane road and at times was at speeds over 90 mph. The driver crossed the center line multiple times, ran red lights, and at one point went through a parking lot and struck a police car.

Ultimately, the pursuit ended when the officer rammed the suspect vehicle causing it to leave the road and overturn. The driver was rendered quadriplegic. Of course, the driver sued the officer.

The U. S. Supreme Court analyzed the case under the *Tennessee v. Garner* reasonableness standard and held that the driver's actions posed a risk to innocent bystanders and police officers, and that risk outweighed his Fourth Amendment rights. Put another way: The driver created a substantial risk to others, and it was reasonable for the officer to use force to stop him. This is the rule even when the officer's reasonable actions place a fleeing motorist at risk of serious injury or death.

Finally, the Court held that officers have no obligation to terminate a pursuit in order to protect innocent bystanders from harm caused by a fleeing motorist. The Court reasoned that termination of a pursuit does little to ensure that a fleeing driver will drive more safely, whereas ramming a fleeing vehicle will bring a pursuit to end, ensuring safety for all except the fleeing driver.

While the Court's opinion protects officers from civil suit when they use force to end a pursuit, we offer two warnings. First, Michigan's courts may not hold the same way when faced with the same set of facts. Second, where department policies forbid ramming, officers could face discipline if

they ram a vehicle (even when it seems reasonable).

²The text of the opinion and a video of the pursuit can be found on the Supreme Court's [Opinions Webpage](#).

DID YOU KNOW?

Note: The following material does not represent new law. Instead, it is intended to inform officers of infrequently used laws which might prove useful.

It is not illegal under Michigan law to openly carry a pistol

As odd as it may appear, it is legal in Michigan for a person to carry a pistol in public as long as it is carried with lawful intent and not concealed.

Of course, there are limits. First, a person may not carry a pistol into any of the places listed in [MCL 750.234d](#). Second, a person may not carry a pistol in a manner that violates the brandishing a firearm statute ([MCL 750.234e](#)). Finally, a pistol can't be carried in public where it violates local ordinance.

BACK TO BASICS

Note: The following material does not represent new law. Instead, it is intended to reinforce basic rules of law that police officers frequently apply.

Michigan police officers have authority to conduct inspections of establishments licensed to sell liquor

The [Michigan Liquor Control Code](#) grants police officers the authority to inspect businesses licensed to sell liquor (see [MCL 436.1217](#)) during their normal business hours. Further, it is unlawful for a licensee to obstruct a liquor inspection ([MCL 436.1201](#)).

In addition to inspecting for violations of the Liquor Control Code, officers may inspect for violations of the Liquor Control Commission's (LCC) [Administrative Rules](#).

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Liquor inspections, continued...

The LCC's [Enforcement Webpage](#) contains a wide variety of information to assist officers conducting inspections including a list of [common violation codes](#) and a [Law Enforcement Reference Manual](#) (the material most helpful to police begins on page 21).

Criminal violations found during an inspection may be prosecuted as any other crime may be (citation, warrant request, etc.). All violations (criminal and administrative) must be reported to the LCC using their [Violation Report Form](#). This form allows the LCC to track violations and take licensing action when necessary.

Liquor inspections may be conducted without a search warrant. However, the U.S. Supreme Court has held that forced entry may not be used to accomplish administrative searches (*Camara v. Municipal Court*). When an officer is denied entry to a business, or denied access to a particular part of a business, a search warrant should be obtained. The Court in *Camara* noted that such search warrants do not require probable cause.

Finally, the Michigan Court of Appeals has held that a search warrant is not necessary when a liquor inspection seeks evidence for violations of the Act (*People v. Jones*). In *Jones*, police conducted a liquor inspection at a party store after receiving information that drugs were stored in a box behind the counter. During the inspection, officers found the box but the owner refused to open it. The officers obtained a search warrant, but the Court held that to be unnecessary since the Act specifically authorizes police to inspect for any violation of the Act (which prohibits the sale of controlled substances on licensed premises).
