



MICHIGAN STATE POLICE  
**LEGAL UPDATE**  
MAY 2007

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**CRIMINAL PROCEDURE**

Full citations have been omitted.

**Restraining a person for medical reasons is not a seizure for Fourth Amendment purposes**

In *Peete v. Nashville*, paramedics responded to a 9-1-1 call requesting help for the victim of an epileptic seizure. The paramedics eventually used force to restrain the victim and he died as a result. The family of the deceased sued using various tort theories. They also claimed the force amounted to a government seizure of the type protected by the Fourth Amendment.

The U.S. 6<sup>th</sup> Circuit Court of Appeals held that such force is not a seizure under the Fourth Amendment. The Court held that "where the purpose is to render solicited aid in an emergency rather than to enforce the law, punish, deter, or incarcerate" constitutional liability does not exist. An exception exists where the government knowingly uses force to transport a competent adult over his or her announced objection unless the person poses a danger to themselves or others.

The lesson of this case is particularly important for police officers who also serve as paramedics, EMTs, or firefighters. When responding to a medical emergency

requiring physical restraint of a person, officers should ensure that their reports indicate they were acting in their medical capacity and not taking enforcement action.

**SEARCH & SEIZURE**

Full citations have been omitted.

**A person loses their expectation of privacy in abandoned property, even when ownership has not been relinquished**

In *People v. Henry*, the defendant abandoned a bag by placing it on an electric box near a utility pole when he saw an unmarked police car approaching. The officers inspected the bag and found that it contained illegal recordings.

In its order reversing the Court of Appeals<sup>1</sup>, the Michigan Supreme Court distinguished Fourth Amendment cases from property law cases. Under property law, a person must unquestionably relinquish ownership to have abandoned property. Under Fourth Amendment analysis a person must simply relinquish his or her interest (not ownership) in property by giving up their reasonable expectation of privacy in the property.

In *Henry*, the defendant placed the bag where any passerby could have access to it and he said nothing to assert his privacy interest as officers searched the bag.

<sup>1</sup> For more information on the facts of this case see the Court of Appeals' [unpublished opinion](#) reversed by the Supreme Court.

### **The inventory exception to the search warrant requirement can extend to personal property**

In *United States v. Tackett*, officers responded to a single-car rollover crash. Prior to arrival of the officers, the driver crawled out of the car and up a hill, dragging with him a computer bag and a backpack. When the driver was taken to a hospital via ambulance he left one of the bags at the scene. Officers inventoried the bag and found silencers and an illegal firearm inside.

The U.S. 6<sup>th</sup> Circuit Court of Appeals upheld the inventory search because it was conducted pursuant to “standardized procedures” and the owner never clearly asserted a privacy interest in the contents of the bag.

Most departments have policies requiring the inventory of towed vehicles. However, before conducting an inventory of personal property outside of a vehicle, officers should ensure that their department’s policy also requires such inventories.

It is also worth noting that had Tackett asked to take the bag with him, officers would most likely not have been able to inventory it since the policy reasons behind the exception (e.g., prevention of property disputes) would not have been an issue.

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### **Post-fire dangers may present exigent circumstances justifying a warrantless search**

In *United States v. Buckmaster*, firefighters extinguished a residential fire. During the fire, a waterbed burst causing water to flow into the basement. After the fire, firefighters and a police fire investigator inspected the residence, looking for the cause of the fire and other fire-related dangers (e.g., carbon monoxide and electrical or structural damage). Prior to the inspection, the officer recalled previous complaints of the homeowner setting off fireworks. He questioned the homeowner who admitted to having fireworks but advised that they were no where near the fire.

During the inspection, the officer and firefighters found 1,250 pounds of illegal explosives in the furnace room. At trial, the homeowner claimed that the explosives were found in violation of the Fourth Amendment.

The U.S. 6<sup>th</sup> Circuit Court of Appeals reiterated the well-established rule that police and fire officials may conduct a post-fire warrantless search for the cause and origin of a fire. The court further held that the warrant requirement does not apply when officials conduct a search aimed at ensuring that a home is safe for its inhabitants to return to.

In *Buckmaster*, the search of the furnace room was conducted to ensure that the leaking waterbed didn’t cause electrical damage, and the explosives found in plain view were properly seized.

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## **DID YOU KNOW?**

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

### **Open carry of a pistol...revisited**

In the April 2007 edition of the Update we noted that openly (non-concealed) carrying a pistol in Michigan is generally legal. Here we will note a couple of things to keep in mind during open carry situations.

First, a person may not “open carry” a pistol in the passenger compartment of a vehicle. Once a person enters a passenger compartment with a pistol they are carrying it concealed in violation of [MCL 750.227](#). In order to carry in a passenger compartment, a person must either be licensed to carry a concealed pistol or otherwise be exempted from Section 227 (e.g., a police officer).

Second, in the April edition we noted that a pistol cannot be carried in public where it violates local ordinance. This is true, but only where the ordinance is specifically authorized by state law.

*Continued next page...*

*Did You Know?, continued...*

In *MRCGO v. Ferndale*, the Michigan Court of Appeals held that local units of government may not impose restrictions upon firearms possession. Therefore, officers should check with their prosecutors before enforcing an ordinance that imposes a general ban on openly carrying a pistol.

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## 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.

### Discussion concerning the different levels of police encounters and probable cause

Here we depart somewhat from our usual 'Back to Basics' format. Rather than offer a restatement of some aspect of the law, we offer the 6<sup>th</sup> Circuit's recent opinion in *United States v. Campbell*. That case offers a discussion of the three levels of police-citizen encounters (consensual encounters, *Terry* stops, and arrests) and a brief discussion of probable cause.

The opinion does not announce new law, but pages 1-7 describe the elements and standards for police-citizen encounters. It also briefly discusses probable cause.

## LEGAL RESOURCES

The Michigan [Court of Appeals](#) website provides public access to Michigan Court of Appeals and Supreme Court decisions issued since 1996. Cases can be searched by docket number, party name, or attorney name. In addition, the results of a search will provide the user with a history of all pleadings and filings associated with the appellate portion of a case.

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