



THE DOCKET

The Newsletter of the Michigan Association of District Court Magistrates

November, 2003

NEW RADAR CASE LAW

Court of Appeals again examines doppler radar units

Strawcutter Speeding

Conviction Upheld *By Dennis Pelham*

-- *Daily Telegram Staff Writer* - (appearing in the Lenawee Connection, Liberty Group Newspapers - used with permission.)

No routine maintenance checks on radar equipment are needed to make speeding tickets hold up to court scrutiny, ruled the Michigan Court of Appeals in a Lenawee County case.

A 2001 speeding conviction for the Rev. Rick Strawcutter of Adrian was put back on the books in a ruling issued last week by a state appeals court panel in Detroit.

Strawcutter won his initial appeal in Lenawee County Circuit Court last year after being convicted in district court for driving 50 mph in a 30 mph zone on Siena Heights Drive in October 2001.

Circuit Judge Timothy P. Pickard overturned the speeding conviction on the grounds that the prosecution failed to show the radar unit was maintained according to the manufacturer's recommendations. The maintenance rule is one of a series of points established in the 1984

People v. Ferency appeals court case that governs radar speed enforcement in Michigan.

An organization has since updated Michigan specifications to match new maintenance-free technology, Lenawee County Assistant Prosecutor Gregory Grover argued in an appeal of Pickard's ruling.

The Michigan Speed Measurement Task Force requires police agencies in Michigan to only use radar equipment that does not need regular servicing or maintenance checks.

The appeals court panel's ruling last week noted the Ferency decision left room for this type of development.

In the Ferency case, the court ruled "there may exist other agencies or organizations with a demonstrable expertise in this area that promulgate similar guidelines that may be used to show that the above guidelines have been met."

"The Michigan Speed Measurement Task Force is an agency with 'demonstrable expertise,' " said the appeals court panel, made up of judges William Whitebeck, Kathleen Jansen and Jane Markey.

In the Strawcutter case, they said, Lenawee County Sheriff's Deputy Carl Polan testified at the 2001 hearing the unit did not require any routine servicing.

"Therefore, we conclude that Officer Polan complied with the relevant servicing requirements under Ferency: No servicing was recommended and no servicing was performed."

Polan said Monday he hopes the appeals court ruling settles the legal issue of servicing radar equipment.

"You still have to show there were no problems with the unit," Polan said.

Officers put radar units through a series of tests at the start and at the end of each shift that include comparing radar readings with the patrol car speedometer.

"That's all part of the Ferency rule," he noted.

So long as the tests show radar equipment is operating properly. Polan said, there is no need to send it in for maintenance work or recalibration.

(Editor note: you can access the full opinion of the court - using adobe acrobat at:
http://courtofappeals.mijud.net/documents/OPINIONS/FINAL/COA/20031021_C241098_40_241098.OPN.PDF - People v Strawcutter, opinion 241098.)

DISABLED PARKING PERMITS & LOCAL ORDINANCE

ENFORCEMENT by Jim Pahl,
Magistrate, 55th District Court

The Court of Appeals issued opinion 241486 for publication on November 18, 2003, *Monroe v Smith*. This will impact urban jurisdictions with active parking enforcement details. The case states that anyone holding a valid disabled parking permit is exempt from local parking time restricted parking ordinances, except those

involving fire lane or for accommodation of heavy traffic during morning and afternoon rush hours.

Defendant is disabled and has a valid disabled parking permit. She was parking in a time restricted space and received 203 parking citations under local ordinance. The court stated the provisions of MCL 257.675(6) precluded the municipality from citing defendant for a time-restriction parking violation under local ordinance.

VEHICLE CODE ENFORCEMENT ON PRIVATE ROADS - *provided by* *Sandra Hartnell, SCAO*

Mike Cox, Michigan's Attorney General, has issued Opinion No. 7138 on September 23, 2003. The head note of this case states: "The provisions of the Michigan Vehicle Code applicable to private roads authorize a police agency to issue citations to motorists for certain civil infractions and criminal traffic violations on private subdivision roads accessible to the public. Even if the road is not open to the general public, section 951 of the Michigan Vehicle Code, MCL 257.951, allows a person in charge of the road to contract with a city, township, or village to enforce provisions of the uniform traffic code or ordinance adopted under that section."

You can obtain a copy of the full opinion at the Attorney General's web site.

SEARCH WARRANTS *By Sandra* *Hartnell, SCAO*

HB 4715 has passed the legislature and was signed by the Governor, effective October 17, 2003 as Public Act 185. Magistrates may now issue any type of search warrant by fax. You can obtain the full text of this statute at the web site of the Michigan Legislature.

SNOWMOBILE REGULATIONS *by Sandra Hartnell, SCAO*

In an unpublished opinion of the Court of Appeals (#246171) decided October 28, 2003, Township of Chocolay v DNR, the court ruled that the DNR is not subject to local zoning ordinances that prohibit the operation of snowmobiles on state land. The snowmobile act (MCL 324.82101 et seq) intended that the designation of land for snowmobile operation on state owned or state controlled lands cannot be preempted by restrictions of a local unit of government, including township zoning ordinances.

CHARGING COSTS ON DISMISSAL *by Jim Pahl, Magistrate, 55th District Court.*

Can a court impose costs upon a defendant when the case is dismissed? It appears the answer is no. In Opinion 6995, issued by then attorney general Frank Kelley - he stated: "There is, however, no authority for a Michigan court to impose any costs on a criminal defendant where he or she is not convicted of a crime. There is likewise no statutory or case law authority for prosecutors to impose any costs, 'local' or otherwise, upon a criminal defendant as a condition of reducing or dismissing criminal charges pending against the defendant."

Judicial Ethics opinion JI-55 indicates that a court in sentencing a criminal defendant could not require the defendant to pay money except as authorized by law.

Judicial Ethics opinion JI-117 states that a judge may not sanction a plea bargain in a criminal case in which the prosecutor requires the defendant to pay a "costs of prosecution" fee to the prosecutor's office in return for a reduction or dismissal of the pending criminal offense.

It therefore seems clear, a court cannot impose any costs upon the defendant upon a dismissal or as a condition of dismissal.

NO PROOF OF INSURANCE *by Jim Pahl, Magistrate, 55th District Court*

Keep you eye on HB 4308. This bill would waive fine/costs for no proof of insurance tickets. There have been some committee hearings on this and it appears the compromise currently being considered, is that if the motorist can show they were insured at the time, the court would still collect the \$25.00 insurance fund assessment, but the matter would not be abstracted to the Secretary of State. Stay tuned to this station for further developments.

USEFUL WEB SITES *by Jim Pahl, Magistrate, 55th District Court*

Within the next few weeks, the "links" page of the web site of this association will be expanded. You will find links to a number of web sites that may be useful in conducting your hearings. You can find our web site at: madcm.org

PRESIDENTS MESSAGE, *by Dena Altheide, President, MADCM; Magistrate, 67th District Court,*

Hello -

This year's conference was a spectacular event! The weather held out; the colors were beautiful and Crystal Mountain was wonderful. We had approximately 67 attendees and I'm sure all left with a wealth of information from our speakers. Its amazing what you can learn at these conferences! Lt. Timothy Lee from the Michigan State Police gave us insight on computer crimes such as child pornography and identity theft. Sgt. Kellee Robinson of the Michigan State Police and Ron Wilson, Director

of Driver Improvement from the Secretary of State gave us tips on how to deal with the "mature driver". Mary Jo Desprez and Jennifer Schrage from Eastern Michigan University delivered an extremely interesting presentation on how EMU deals with underage alcohol. And our own Tom Truesdell from Ypsilanti is an integral part of their program. They gave us a lot of ideas. And last, but certainly not least, Sandi Hartnell from State Court Administrator's Office reviewed the fee increases and new legislation.

We also had our business meeting where we were given reports from the various agencies such as Secretary of State, Office of Highway Safety, etc., and had election of officers. The election results were: Dena Altheide, **President** (thank you very much!); Tom Bleau, **Vice President**; Charlie Pope, **Treasurer**; Jim Pahl, **Secretary**; Jennifer Bennon, Cindy Cope, Tom Truesdell and Terry Walker, **Executive Board Members**. Congrats!

But probably the most important facet of our conference is the time spent together networking, meeting new people, getting new ideas on how to handle certain issues and just being merry. Over the years, we, the executive board, have been fortunate enough to met hundreds of different magistrates by attending the conferences and through other means of communication. MADCM tries very hard to reach out to all magistrates throughout the state with not only information, but support. I encourage all of you to come to next year's conference at Tree Tops in Gaylord, Michigan. The dates are September 22-24, 2004. Mark it on your calendar now!

This is the last issue of "The Docket" for 2003. Its hard to believe this year is coming to a close. I'd like to take this opportunity to thank Tom Truesdell and Krista Krause for a truly exceptional conference. And to Tom and Dennis Hall, my heartfelt gratitude for helping with the educational program which is so important. To

all MADCM members, I wish you the best of holidays and peace!

CONSERVATION FEE, *by Jim Pahl, Magistrate 55th District Court, based upon information provided by Lt. David Purol, DNR.*

What is it and when you do charge it? 1994 PA 451 provides for the collection of a \$10.00 judgment fee by the court for violation of statutes protecting game and fish. This fee is commonly referred to as the conservation fee. At the end of the month, the court remits these monies to the State Treasurer, using Treasury form 295. These fees are deposited into the Fish and Game Protection Fund. Follows is a list of those violations where the fee is to be charged:

ENDANGERED SPECIES

Endangered Species Protection - part 365

SHOOTING & HUNTING GROUNDS

Part 407

Private Shooting Preserves - Part 411 & 417

POSSESSION, SALE OF WILDLIFE

Furs, Hides & Pelts - part 425

Breeders & Dealers - part 427

Foxes in captivity - part 431

AQUATIC SPECIES

Frogs - part 455

Propagation of Game Fish in Private Waters
part 459

Fishing in Bays & Harbors - part 461

Certain Commercial Fishing laws - part 467

Rainbow Trout in Soo Rapids & St. Mary's
River - part 469

Commercial Fishing - part 473

Passage of fish over dams - part 483

Spearing fish in Houghton Lake - part 485

Sport Fishing - part 487

Whaiska Bay - part 489

Reciprocal Agreements with Adjoining States -
part 491

WILDLIFE CONSERVATION

Wildlife Conservation - part 401

Wildlife Preservation - part 403

HUNTING & FISHING LICENSING

part 435

Plus all rules and orders promulgated or issued under the authority of these parts.

2004 CONFERENCE *by Dennis Hall, Magistrate, 70th District Court*

For those of you who wish to check out our 2004 conference site for yourself. Tree Top Resort has offered the membership of the association a special Winter Rate for February (midweek only) of \$59.00 to \$89.00. Or January thru March (weekends available) a rate of \$89.00 to \$129.00. If you would like to see the flier for this offer, please contact Dennis W. Hall at the 70th District Court (dhall@saginawcounty.com) Or (989) 790-5397 and he will get you the necessary paperwork.

The 2004 conference will be September 22 thru the 24th.

LEGISLATIVE UPDATE, *by Tom Bleau, Magistrate, whatever court*

A number of bills of interest to magistrates have been winding their way through the legislature. The first bill of note is P.A. 185 of 2003. This is the long awaited amendment to MCL 780.651. The bill unequivocally gives district court magistrates the authority to sign search warrants by fax or other electronic or electromagnetic means including warrants transmitted over a corporate network such as email. The bill took immediate effect. The association thanks all its members who wrote or contacted their legislators in favor of this bill.

Currently, there are three bills in the legislature which provide for the imposition of jail time for minor in possession cases: SB 637,

SB 376 & HB 5033. Each offers variations on the theme, but the bill which appears to have the best chance of passage is SB637 which has already passed the Senate. It provides for a deferred sentence for a first time MIP. The Court could still order probation, community service, rehabilitative services and probation costs. If the deferred sentence was successfully completed, then no adjudication will be entered and the case will be dismissed. Conversely, if the deferred sentence was not successfully completed then an adjudication of guilt is entered and the sentencing proceeds as normal. The state police would be charged with keeping a statewide record of those deferrals so that a person could only take advantage of this procedure once.

The bill treats non-deferred first offenders the same as current offenders with \$100 fine plus costs and community and rehabilitative services. For a second offender the fine could be increased to \$200 and the minor could be subjected to 30 days in jail, but only if the minor had first been put on probation, and then violated an order of probation. For a third time offender the fine could be increased to \$500 and the minor could be subjected to 60 days in jail, but only if the minor had first been put on probation, and then violated an order of probation. (Originally, the bill had a cap of 93 days in jail, but your magistrate association intervened and the bill was passed with jail time within our jurisdictional limit.)

The bill would also legislatively overrule the Chippewa County court case and make it an offense to have any bodily alcohol content regardless of whether the minor legally drank in Canada or illegally drank here.

Another bill, HB 4308 deals with the issue of no proof of insurance. Originally, it waived the \$25 fine but kept the reporting to the Secretary of State and the \$300 fee. After the committee hearing with objections from various court administrators, this was reversed, the \$25 fine was kept but the abstracting to the Secretary of State was deleted. This legislation has not yet been passed by the House.

Your magistrate association attempts to keep current on legislation by being on the email list for the Senate Judiciary Committee and the House Judiciary Committee and the Public Policy Update of the State Bar of Michigan. Sandi Hartnell also tries to keep us informed of current developments .Even with all these sources, however, sometimes important bills slip through. If you know of legislation that we should be tracking, please feel free to email me at bleaut@baycounty.net or phone me at (989) 895-4231.