



THE DOCKET

The Quarterly Newsletter of the
Michigan Association of District Court Magistrates

Summer 2012

MMMA FACTS NOT REQUIRED FOR MARIJUANA SEARCH WARRANTS

The Michigan Court of Appeals released a published opinion on August 28, 2012 in *People v Brown* [COA# 303371], which held that a search warrant for evidence of marijuana does not need to be based upon an affidavit of facts showing that a person was not authorized to grow marijuana under Michigan's Medical Marijuana Act.

The facts were that the defendant's former roommate informed police that he believed that the defendant was growing marijuana plants in his home, because he saw grow lights and ventilation fans in the home as well as small marijuana plants growing under the lights. Officers did a trash pull search of the defendant's discarded trash and found mail addressed to the defendant and a small part of a marijuana plant. Based on the findings in the trash and the information from the roommate, the officers obtained a warrant to search the defendant's home, and the defendant was consequently charged with the manufacture of marijuana.

In the trial court, the defendant moved to dismiss the charge on the basis that the affidavit submitted in support of the search warrant had failed to establish the illegal nature of the defendant's activities because it had not included information that the defendant was not authorized to grow the marijuana under the MMMA.

The trial court held that the immunities provided to a qualifying patient or a primary caregiver under MCL 333.26424 removed the per se illegality of

the possession of marijuana. The trial court also held that evidence of a suspect's mere possession of marijuana was no longer sufficient evidence of a crime to support probable cause. Thus, the trial court held that to support a probable cause ruling, "the affidavit must set forth specific facts from which a magistrate can conclude the possession is not legal under the MMMA." Despite its holding, however, the trial court did not suppress the evidence obtained from the search of defendant's home because the trial court applied the good-faith exception to the exclusionary rule.

The Court of Appeals clarified the error and held that the MMMA did not require a showing that it did not apply to justify the search warrant, and the trial court improperly concluded otherwise. Further, the COA stated the trial court's holding was inconsistent with the Court of Appeals' statements in *People v King*, 291 Mich App 503; 804 NW2d 911 (2011), rev'd in part on other grounds by *People v Kolenak*, 491 Mich 382; ___ NW2d ___ (2012). In *King*, the Court of Appeals held that "[b]y its terms, the MMMA does not abrogate state criminal prohibitions of the manufacturing of marijuana." *Id.* at 508-509.

The Court of Appeals held that the search warrant and the search were valid, and the court thus properly refused to dismiss the charge, and the defendant was properly convicted.

The link to the full opinion is:

http://coa.courts.mi.gov/documents/OPINIONS/FINAL/COA/20120828_C303371_29_303371.OPN.PDF

Technology Corner

Editor’s Note: *This new section of The Docket will be used to post articles or stories about new technologies that Michigan Trial Courts are using that might be utilized by D.C. Magistrates. Please send your submissions to: Kevin.mckay@kentcountymi.gov*

Disclaimer: *Any mention of a vendor is not an endorsement of any kind. Each court must do their due diligence to determine which vendor works best for their needs.**

The 63rd District Court [Kent County] recently began receiving, signing and sending blood search warrants on iPhones. With the 3rd party vendor “eFax”, there is no need for police officers to use a computer or email. Judges and Magistrates can get rid of their land lines for fax machines, and handle everything right from their iPhone or iPad.

If the police agencies in your jurisdiction fax their affidavits and search warrants, then they will not know the difference. With every eFax account, you are given a dedicated [local or toll-free] fax number, so the officers send it from their fax machines and get them back on their fax machines.

First, you must register and purchase an eFax account at www.efax.com. There is a 30-day free trial you can sign up for, and you get a discounted price if you then sign up for an annual membership [\$169.50 per year].

Second, once you have your eFax account, you then create and save your digital signature to your eFax account by faxing yourself your signature and cropping it.

You can either do everything from a computer/laptop, or download the free eFax app for your iPhone or iPad. Once you save your digital signature into your eFax account, you will have access to it on your iPhone or iPad to be dropped and dragged into place on the documents you want to sign.

The iPhone/iPad app for eFax allows you to “drop and drag” your saved digital signature onto documents. However, dates and text fields cannot be added to documents using the iPhone or iPad. Therefore, you will need the police officer to fill in the date prior to faxing it to you.

The full eFax website using a computer/laptop has the best great functionality because in addition to allowing you to “drop and drag” digital signatures, it also allows you to create small text boxes that you can type dates or other text into on the documents.

The Android App for eFax has only limited functionality. It allows you to send and receive faxes, but does not allow (as of yet) use of digital signatures or text boxes. A request has been made for eFax to upgrade their Android app.

Device	Apply a digital signature	Apply a date or other text
Android	Not yet	No
iPhone	Yes, D&D	No
iPad	Yes, D&D	No
Computer	Yes, D&D	Yes, type in a text box

The New K2 /Synthetic Drug Law and its Effect of Driving

*Article by Jon Gonzalez (MDCH)
and Kenneth Stecker (PAAM)*

The Michigan Department of Community Health (MDCH) had two objectives for the Synthetic Drug Bill Package of 2012 (House Bills 5338 and 5714 and Senate Bills 789 and 1082): Amend the language that previously prohibited synthetic cathinones and synthetic cannabinoids to criminalize them and ensure they remain prohibited after analogues are inevitably created.

MDCH worked with numerous stakeholders including the Michigan State Police, the Prosecuting Attorneys Association of Michigan, Michigan Department of Licensing and Regulatory Affairs Board of Pharmacy, Michigan Poison Control Center -Children's Hospital of Michigan, local law enforcement agencies, and a variety of internal department attorneys, toxicologists, pharmacologists, and epidemiologists.

MDCH put together a four-bill package that not only addressed the current proliferation of synthetic forms of cathinones and cannabinoids, but also created an emergency rules promulgation process that would allow the state to address future synthetic drug health threats in a more expeditious manner than the previous method allowed.

Previous legislation prohibited specific substances by individual name. As a result, clandestine manufacturers of synthetic drugs made alterations on the prohibited parent compound that created a structurally dissimilar compound not covered under statute or administrative rule. Senate Bill 1082 effectively addressed this problem by focusing on the chemistry to include language that captured any analogue of these two chemical groups more effectively.

The remaining three bills were tie-barred and created the emergency rule promulgation process. One of those bills, House Bill 5338, included an expanded section on imitation controlled substances. This language allows law enforcement to seize suspected contraband if it meets certain criteria and is intended to be another tool to mitigate proliferation until a permanent legislative solution is obtained.

What does this mean as to individuals who choose to drive with this drug in their system? Michigan Compiled Law 257.625(8) reads as follows:

“A person, whether licensed or not, shall not operate a vehicle upon a highway or other place open to the general public or generally accessible to motor vehicles, including an area designated for the parking of vehicles, within this state if the person has in his or her body any amount of a controlled substance listed in schedule 1 under section 7212 of the public health code...”

In essence, Michigan and approximately one-third of the other states have adopted the per se standard, which may be the single most effective policy tool for dealing with drugged drivers. Any detectable amount of a controlled substance, (i.e. K2 Spice), in a driver's body, constitutes per se evidence of a drugged driving violation.

With Michigan's per se statute, drivers know that they must not use Schedule 1 controlled substances (i.e. K2 Spice) before getting behind the wheel of a car or they face the risk of being charged and convicted under Michigan's per se statute. Now, with the passage of the new law, drivers who are on K2 Spice should not be on Michigan's highways as they pose a danger to other innocent drivers.

Driving with designer drugs is drugged driving.
Driving with designed drugs in your system

definitely would present a serious and potentially deadly danger to other motorists out on the highways. In conclusion, a crash involving drugged driving is one of the most frequently committed crimes in the United States.

For more information on this new law and PAAM training programs, please contact Kenneth Stecker, Traffic Safety Resource Prosecutor, at (517) 334-6060 or e-mail at steckerk@michigan.gov.

Small Claims and Mini Tort Changes

REMEMBER – The small claims maximum damages amount is now \$5,000 [as of September 1st], and the mini-tort allowable damages increases from \$500 to \$1,000 on October 1, 2012.

Marriage Bills Signed by Governor Snyder

Public Acts 265 & 367 of 2012 [SB 698 & 700] were signed by the Governor on June 25, 2012.

P.A. 265 modified the law to now allow district court judges, district court magistrates and probate judges to perform marriages anywhere in the state. Magistrates are now not restricted to their district, and Judges no longer need to be appointed as Probate Judges by SCAO to perform marriages outside their county. However, a municipal judge may still only perform marriages “in the city in which the judge is serving or in a township over which a municipal court has jurisdiction”.

P.A. 267 clarifies that the \$10.00 marriage fee “shall be remitted to the district court in which the district judge or magistrate performing the marriage serves.” This fee used to be paid to the Probate Court in the County where the Judge was appointed to perform the ceremony in.

Public Acts Of Interest

P.A. 258 (SB 853) – revises the fingerprint and criminal history record information requirements under driver education provider and instructor act; **and reduces the number of hours of behind-the-wheel training required for Segment One or Two from 7 to 6 hours.**

P.A. 262 (HB 4146) – requires warning lights on commercial snow removal vehicles [**used to remove snow or ice for payment or other remuneration**].

P.A. 263 (SB 1030) – revises the requirements for stopping for school buses by **eliminating the statutory exception that stated that you don’t have to stop completely and can pass a school bus at an intersection controlled by an officer or stop-and-go light at a reasonable and proper speed not greater than 10 mph.**

P.A. 282 (SB 582) – increases permissible length of truck & trailer combinations used to transport boats from manufacturer to **75 feet** [now same as stinger-steered combo], **and eliminated the 3 axle maximum restriction on semitrailers with a length longer than 50 feet.**

Recently Introduced House / Senate Bills

HB 5454 – Would prohibit law enforcement agencies from using “unmanned traffic monitoring device” except (1) at RR crossings; (2) if police are present at the location and issue the driver an immediate citation; and (3) if officer of State Police is enforcing state or federal motor carrier laws. Adds MCL 257.751.

HB 5536 – Would increase minimum fine for violation of handicap parking sign [257.674(1)(s)] to \$200 and maximum fine to \$500. Amends MCL 257.674 & 907.

HB 5538 – Would prohibit cell phone use while operating a motor vehicle for level 2 graduated license holders [civil infractions but no points]. Adds MCL 257.602c.

HB 5616 – Would regional district court for MSP citations by allowing local funding units of judicial districts where an MSP post is located to enter into an agreement with MSP [subject to approval of SCAO] to designate that district court as the proper venue for all “actions arising out of citations” issued by MSP assigned to that post for violations of MCL 257.1 to 257.923. Amends MCL 600.8312.

HB 5781 – Would lengthen time frames under Security Deposit Act; response from tenants to notice of damages would change from 7 days to 60 days, and length of time for landlord to file civil action would change from 45 days to 2 years. Amends MCL 554.609, 554.612, 554.613.

HB 5813 – Would allow parties to make their own audio recording of court proceedings. Adds MCL 600.1488.