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CRIMINAL LAW

Once lawfully inside a "dwelling," a person cannot be prosecuted for home invasion for subsequently entering an interior room of the dwelling without permission

In People v. Bush, Bush was invited into the victim's home by the victim's adult son, who also resided in the home. While Bush was in the home, the victim barricaded herself in an upstairs bedroom because Bush had sent her threatening text messages. Bush then kicked the bedroom door open, forced a dresser out of the way, entered the room and assaulted the victim. Bush was arrested and charged with first-degree home invasion pursuant to MCL 750.110a.

Before trial, the prosecution filed a motion for a special jury instruction to "cover a fact pattern where a person lawfully enters the home, but then breaks into a room within the home to which he had no permission [to enter]." Bush objected, reasoning that the term "dwelling," as defined by MCL 750.110a(1)(a), did not encompass a room within the dwelling and, therefore, a person could not be convicted of home invasion for breaking into an inner room of a dwelling if that person was already lawfully present in the dwelling. The trial court granted the prosecution's motion and the defendant appealed.

The Michigan Court of Appeals reversed the trial court's order and held that once a defendant enters a dwelling with permission, he cannot unlawfully enter the same dwelling where he is already lawfully present.

The Court noted that MCL 750.110a(1)(a) defines the word "dwelling" to mean "a structure or shelter that is used permanently or temporarily as a place of abode, including an appurtenant structure attached to that structure or shelter," but the statute does not further define the terms "structure," "shelter," or "abode." The Court reviewed the dictionary definitions of the undefined terms and found that it was evident that the term "dwelling" as defined by MCL 750.110a(1)(a) refers to the whole of a structure or shelter used as a place of residence.

Accordingly, officers should not arrest a person for home invasion who lawfully enters a home, but then breaks and enters or enters without permission an interior room within the home because such conduct is not prohibited by MCL 750.110a.

VEHICLE CODE

The portion of a person's private driveway immediately next to his or her private residence is not a place "open to the general public" or a "place generally accessible to motor vehicles" for purposes of the Michigan Vehicle Code

In People v. Rea, officers were dispatched to Rea's house to investigate a noise complaint. Upon arrival, an officer observed the door to Rea's detached garage open and watched as Rea backed his vehicle "about 25 feet" before stopping at a point in his private driveway in line with his house. Rea then pulled the vehicle back into the garage. At all times Rea's vehicle was either in his side yard or backyard. (See pictures in the Court's opinion.) Rea was arrested and charged with operating while intoxicated pursuant to MCL 257.625(1).

MCL 257.625(1) provides in relevant part:

> A person . . . 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 . . . if the person is operating while intoxicated.

Before trial, the circuit court granted the defendant's motion to dismiss the case, ruling that "the upper portion of [Rea's] private residential driveway" does not constitute an area "generally accessible to motor vehicles" as required by MCL 257.625(1) and the prosecution appealed.

The Michigan Court of Appeals affirmed the trial court and held that the prosecution failed to establish probable cause to believe that Rea "operate[d] a vehicle upon . . . [a] place open to the general public or generally accessible to motor vehicles." The Court found that the commonly understood meanings of the term "generally" in the context of the statute compel the conclusion that the Legislature meant to limit

MCL 257.625(1) to prohibit driving while intoxicated in places where vehicles are regularly, widely, and usually expected to travel.

The Court noted that even assuming the bottom of one's private driveway qualifies as a "place open to the general public" or an "other place generally accessible to motor vehicles," the area of Rea's driveway in which he operated his vehicle was not. The Court further noted the general public is not generally permitted to access that portion of a private driveway immediately next to a private residence.

Officers should note that this ruling is limited in application. As the Court pointed out, its analysis would be different if:

- Rea had driven while intoxicated in the driveway of an apartment building or other community living center;
- Rea's property shared its driveway with the neighboring property; or
- Rea had proceeded to an area of his driveway where he could encounter a member of the general public.

Additionally, the Court noted that a different result might be required if a member of the public trespassed upon Rea's property and drove intoxicated in this area of Rea's driveway.

MEDICAL MARIHUANA

A person who smokes marihuana in his or her own car while parked in the parking lot of a private business that is open to the general public is not entitled to assert the immunity or defense provisions of the Michigan Medical Marihuana Act

In People v. Carlton, security personnel monitoring live feed cameras of a casino parking lot observed Carlton smoking what appeared to be marihuana inside his car. Police officers responded to the parking lot to investigate. Carlton, a qualifying patient under the Michigan Medical Marihuana Act (MMMA), MCL 333.26421 through MCL 333.26430, admitted to the officers that he had been smoking marihuana. The officers observed a marihuana roach on the dashboard and found four bags of marihuana during a subsequent search of Carlton's car. Carlton was the only person in the car at the time.

The prosecutor charged Carlton with possession of marihuana in violation of MCL 333.7403(2)(d) premised on the evidence that Carlton was smoking marihuana in a public place and the MMMA does not permit any person to smoke marihuana in any public place. Carlton moved to dismiss the charge and argued that, as a qualifying patient under the MMMA, MCL 333.26424(a) provides him immunity from prosecution because his car was not a place open to the public. The prosecutor disagreed and argued that the fact Carlton was in his car was irrelevant because the car was located in the casino's parking lot, which is a public place. The trial court dismissed the charges based on the MMMA and the prosecution appealed.

The Michigan Court of Appeals reversed the trial court's decision. The Court noted that, pursuant to MCL 333.26424(a), a qualifying patient who has been issued and possesses a registry identification card is generally immune from arrest or prosecution for the medical use of marihuana and MCL 333.26428(a) allows a patient to assert the medical purpose for using marihuana as a defense to any prosecution involving marihuana. However, the Court also noted the immunity and defense provisions are subject to limitation. MCL 333.26427(a) states the medical use of marihuana is allowed only to the extent that the medical use is carried out in accordance with the MMMA. Additionally, MCL 333.26427(b)(3)(B) specifically states that the MMMA does not permit any person to smoke marihuana "in any public place."

The Court held that the immunity and defense provisions do not apply to persons who smoke medical marihuana in a parking lot that is open for use by the general public, even when smoking inside a privately owned vehicle, and even if the person's smoking is not directly detectable by the members of the general public who might be using the lot. The Court reasoned that a "public place" is generally understood to be any place that is open to or may be used by the members of the community, or that is otherwise not restricted to the private use of a defined group of persons. The Court also noted that Michigan courts have recognized, in common usage, when persons refer to a public place, the reference typically applies to a location on real property or a building. Furthermore, the Court found that a person does not cease to be in the public place (a parking lot that is open for use by the general public) while he or she is in a privately owned vehicle.

Since the undisputed evidence showed Carlton was smoking marihuana in a car that was parked in a parking lot that was open to the general public, the Court held he was not entitled to assert the immunity or defense provisions of the MMMA.

Officers are reminded that a qualifying patient under the MMMA is only immune from arrest for the medical use of marihuana if he or she has been issued and presents his or her registry identification card and valid government issued identification that bears a photographic image of the qualifying patient, provided he or she is in possession of an allowable amount of useable marihuana as described in MCL 333.26424(a).

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