September 2004

Update: Criminal Procedure Monograph 6—Pretrial Motions (Revised Edition)

Part 2—Individual Motions

6.28 Motion to Suppress the Fruits of Illegal Police Conduct

Add the following case summary to the January 2004 update to page 64:

Inculpatory evidence obtained after police officers refused a defendant's request that they leave the defendant's home is inadmissible as fruit of the poisonous tree. *People v Bolduc*, ___ Mich App ___, ___ (2004). In *Bolduc*, the defendant opened his door to two law enforcement officers and allowed them to enter his home. The defendant denied possessing marijuana, refused to consent to a search of his home, and asked the officers to leave. Instead of leaving, however, one of the officers began questioning the defendant about a bulge in the defendant's pocket. The defendant explained that the bulge was $6,500 from a sale he made earlier that day at the defendant's used car lot. The defendant offered to confirm the source of the money by taking the officers to the car lot to verify the sale. The defendant was unable to prove that the sum of money in his pocket was the result of a sales transaction. The defendant eventually admitted to possessing marijuana and took the officers back to his house where the defendant turned over nine bags of marijuana to the officers.

Under these circumstances, the Court of Appeals ruled that the police officers exceeded the constitutional limits of a properly conducted "knock and talk" interaction with the defendant and in doing so, created a coercive environment in which the defendant's subsequent cooperation could not be considered voluntary. *Bolduc, supra* at ___. Applying the standard test to the facts in *Bolduc,* the Court concluded that under the totality of circumstances—the "knock and talk" encounter occurred inside the defendant's home where no real retreat was possible beyond the verbal and physical indication given by the defendant that he wished the officers to leave—a reasonable person would not have felt free to ignore the police officers' presence and go about his business. *Bolduc, supra* at ___. According to the Court:

> "By failing to leave defendant's home when requested to do so, the police officers suggested that they were in control of the situation and would not accept defendant's exercise of the right to preclude them from further activity at the home.
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> "Unlike a street encounter, a person such as defendant does not have the option to test whether he is actually confined by the police conduct that he is faced with by simply walking away. Where was defendant to go to avoid the intrusion of the police upon his own property? At that point, defendant had done everything that was reasonably possible for him to convey the message that the police were no longer welcome in his home." *Bolduc, supra* at ___.

Although the inculpatory evidence was obtained after the coercive "knock and talk" incident inside the defendant's home, the coercion tainted any evidence obtained as a result of the officers' initial visit to the defendant's home. The incriminating evidence obtained during the defendant's later "cooperation" with the officers "ensued from the police officers' improper conduct in failing to leave when requested[and was] properly suppressed as the fruit of the illegal seizure . . . ." *Bolduc, supra* at ___. The Court reiterated the constitutional considerations present in such an encounter:

> "In sum, while the police are free to employ the knock and talk procedure, [*People v*]*Frohriep*, [247 Mich App 692 (2001)], they have no right to remain in a home without consent, absent some other particularized legal justification. A person is seized for purposes of the Fourth Amendment when the police fail to promptly leave the person's house following the person's request that they do so, absent a legal basis for the police to remain independent of the person's consent." *Bolduc, supra* at ___.

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