

Tenth Circuit

# Legal Advisor

Jerry Hill, State Attorney



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*Once a police officer makes an arrest or files an affidavit and collects all the available evidence, the next critical step in successful prosecution is to communicate the facts of the case to the prosecutor....to write the crime report. SAO Intake Division Director Mike Cusick details the elements and processes that render an effective report in this issue of Legal Advisor.*

# Investigative Procedures

By Mike Cusick

## Thorough reports help us prosecute your cases

The successful prosecution of a criminal case partly rests upon the quality of the reports written by the law enforcement officer. It is important that the officer include in the report all of the relevant information obtained during the investigation. It is not up to the officer to make a decision as to what evidence is admissible.

### Criminal Discovery

Under the criminal discovery rules, the State must supply the defense with the names and addresses of all persons known to the State to have information relevant to the offense charged and to any defense to that charge.

The State must also supply all statements made by the witnesses, whether in writing, recorded, or made orally and contained in a report. In addition, the State must furnish any written, recorded or oral statements made by the defendant.

Further, the State must tell the defense of any items that will be used as evidence in the case. Finally, the State must tell the defense whether or not a confidential informant has provided information or material in the case.

If the State fails to disclose any of the above information, the Court may prohibit the use in trial of the information that was not disclosed.

When the term "State" is used, it includes both the police and the prosecutor. Therefore, when the police have information that is not given to the prosecutor, this information cannot be used since it was not disclosed by "the State".

Besides refusing to allow the use of the evidence at the trial, the Court may take other action if it finds that the State failed to disclose information that may have been helpful to the defense.

In an undercover drug

investigation, the purpose of the report should be to thoroughly outline the involvement and observations of the report writer from the beginning of the investigation until its completion.

The report should be so detailed that it completely informs the prosecution and defense of the report writer's involvement in the investigation. It also serves to refresh the memory of the report writer, who probably has conducted numerous investigations before the officer testifies at deposition or trial.

At trial, there should be no surprise testimony about material details that were not covered in the report. The following guidelines must be adhered to in submitting drug investigations to this office:

1. A report must be written by each officer whose observations or involvement is material to the case. This would include reports from officers who recover contraband, identify the defendant, field test the contraband and obtain measurements on school cases.

2. The report should detail the actions taken by the report writer from the beginning of the investigation through its conclusion.

3. The officer must disclose whether or not a confidential informant supplied information in the case.

4. Where the officer who has direct contact with the defendant is going to be making an identification based on a photograph, a photopak should be used where the identification is not made at the time of the drug transaction or soon after it has occurred. The photopak must be preserved as evidence.

5. Officers should make no decisions regarding the relevance of any potential evidence. All items collected should be preserved. This includes all audio or video tapes even if the quality is poor. Special care must be taken not to lose evidence.

The taping of a transaction must be mentioned in the reports.

## Officer's fear for safety of others justified entry into house

In this Polk County case, the defendant was charged with possession of marijuana, possession of cocaine, and other charges and filed a motion to suppress.

The evidence on the motion showed that an officer was dispatched to the defendant's residence because reportedly there was a man in the yard firing a shotgun.

When the officer arrived he observed the defendant standing in the yard pointing a shotgun at other homes in the vicinity and yelling "I'll shoot".

Only after being warned several times did the defendant drop the gun. At that point the officer placed him under arrest.

The officer found recently-fired shell casings in the yard, and

concerned that there might be a shooting victim inside the house he entered it, where he saw narcotics paraphenalia and an unusually large amount of tools.

The officer then returned to the defendant and asked for consent to search the house.

The defendant gave consent and upon searching the house the officer discovered the drugs and stolen property.

The trial court granted the motion to suppress but on appeal, the Second District reversed, holding that the facts known to the officer gave rise to exigent circumstances which justified his entering the house without a warrant.

State v. Boyd, 18 FLW D720 Fla. (2nd DCA March 10, 1993).

**Miranda warnings need not be given prior to searching arrested suspect**

The defendant was charged with possession of cocaine and filed a motion to suppress.

The evidence on the motion showed that while driving an unmarked vehicle, an officer observed the defendant snorting a white powder substance.

After the defendant had stopped, the officer approached him and asked him to get out of his vehicle.

The officer then ordered him to produce the drugs he had used.

The defendant complied and from his pocket produced a baggie containing cannabis and cocaine.

The trial court granted the motion to suppress because the officer did not give the defendant Miranda warnings prior to asking him to produce the drugs.

On appeal, the Fourth District reversed, holding that the officer properly seized the drugs because he had probable cause to arrest the defendant, the request for the defendant to produce the drugs was a valid search incident to arrest, and he did not need to give the defendant Miranda warnings since no interrogation took place.

State v. Meyer, 18 FLW D1619 (Fla. 4th DCA March 3, 1993).

**Business Opportunity Misrepresentation Statute ruled unconstitutional by Second District**

The defendant was charged with misrepresenting the prospects for success of a business opportunity in violation of section 559.809(1), Florida Statutes. He filed a motion to dismiss which the

trial court granted.

He was convicted as charged and on appeal, the Fourth District affirmed, holding that the

(See "Business" next page)

**"Business"**

On appeal, the Second District affirmed, holding that section 559.809(1), is unconstitutionally

vague and overbroad.

State v. McCarthy, 18 FLW D723 (Fla. 2d DCA Mar 10, 1993).

**Evidence sufficient to justify cocaine conviction**

The defendant was charged with possession of cocaine.

The evidence at his trial showed that at the time of his arrest he was alone in a truck owned by another.

When he was stopped for a traffic infraction he twice lied about his identification.

During a search of the vehicle the cocaine was found just underneath and to the side of the driver's seat.

The defendant testified that he did not know the cocaine was there or who put it there.

He was convicted as charged and on appeal, the Fourth District affirmed, holding that the circumstances of the location of the cocaine, the sole possession of the vehicle, and the giving of false information were sufficient to support the conviction.

Schmitt v. State, 18 FLW D571 (Fla. 4th DCA Feb. 24, 1993).

**Officers' approach to defendant's front door through unfenced yard did not violate defendant's right of privacy**

The defendant was charged with manufacturing and possession of marijuana and filed a motion to suppress.

The evidence on the motion showed that officers received a tip from an informant that the  
(See "privacy" next page)

**"privacy"**

defendant was growing marijuana on his property.

The officers went to the defendant's home which was at the end of a dirt road.

There were one or more No Trespassing signs on the road as well as a No Trespassing sign on a tree in front of the house.

The officers approached the front door of the home through the unfenced front yard and knocked on the door where they were received by a female who stated that she lived in the house.

She gave the officers consent to search the back yard where they found marijuana.

The trial court denied the motion to suppress, and the defendant pled no contest reserving his right to appeal.

On appeal, the Fourth District affirmed, holding that the officers did not violate the defendant's right of privacy by walking through his unfenced front yard to the front door even though there were No Trespassing signs posted.

Wysong v. State, 18 FLW D1619 (Fla. 4th DCA March 3, 1993).

**Pawning stolen property justified conviction for dealing in stolen property**

The defendant was charged with dealing in stolen property and filed a motion to dismiss, asserting that the facts of the case did not establish a prima facie case of guilt.

Those facts were that the defendant stole jewelry and sold it to a pawn broker in order to obtain

money to buy food. He intended to repurchase the items at a later time from the pawn shop.

The trial court granted the motion to dismiss, finding that the defendant had not violated the dealing in stolen property statute because he stole the items for his

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**"Pawning"**

own personal use and did not intend to place them into the stream of commerce.

On appeal, the Second District reversed, holding that one who attempts to sell or sells stolen

goods to a pawn broker is not using the items for his own personal use, but has met the statutory requirements for dealing in stolen property.

State v. Nesta, 18 FLW D605 (Fla. 2d DCA Feb. 26, 1993).

**Use of cocaine in reverse sting which had been previously seized did not violate due process**

The defendant was charged with purchase of cocaine within 1,000 feet of a school and filed a motion to dismiss for violation of due process.

The facts on which the motion was based were that the defendant had purchased cocaine from an undercover officer during a reverse sting operation.

The cocaine which the officer sold had been previously seized by

police in unrelated cases and repackaged for use in the reverse sting.

The trial court granted the motion to dismiss but on appeal, the Fourth District reversed, holding that the use of cocaine previously seized in a reverse sting operation is not a violation of a defendant's due process rights.

State v. Caminiti, 18 FLW D431 (Fla. 4th DCA Feb. 3, 1993).

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*Drawer SA, P.O. Box 9000, Bartow FL 33831-9000 (941) 534-4800*