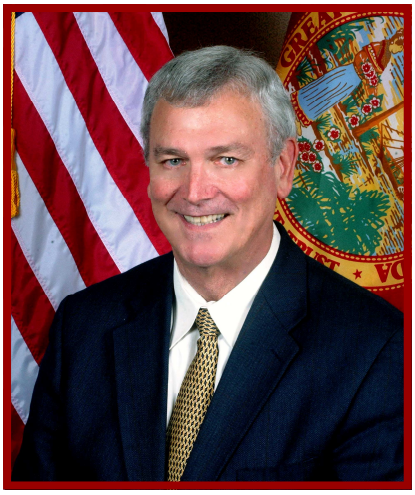

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TENTH JUDICIAL CIRCUIT

VOLUME XXX, ISSUE XIV

March 2013

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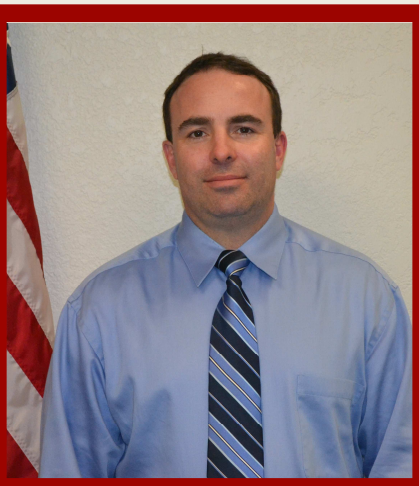
The Importance of a Defendant's Statement

Written by: Steven Alamia, Assistant State Attorney



Assistant State Attorney Steven Alamia is the Chief of Felony Division One.

A recorded statement of the defendant is often a key piece of evidence for the State Attorney's Office to rely upon in successfully resolving a case by plea agreement or trial. The value of a full confession is obvious, but even a statement that is mostly denials can be valuable. A statement that falls well short of a confession, but that locks the defendant into a story or set of facts, can help us prepare for trial and greatly limit what the defense can put on in their case. It can help corroborate identity or proof on an element of the crime. The effectiveness of the statement will depend greatly on how detailed and thorough it is, and, most importantly, no matter how brief the statement, whether it was recorded.

The jury will come to know the content of a defendant's statement at trial by either hearing the recorded statement played in court, or through the testimony of the officer. These two possibilities lead to two very different trials.

With a recorded interview, presentation of the state's case regarding the interview is smooth. The recording will come in through the officer's testimony and be played for the jury. If a transcript is available, the jury members can read along while listening to the defendant. It will be more difficult for the defense attorney to effectively cross examine the officer on the interview. During closing arguments, the state can quote frequently and accurately from the statement, and can recommend that the jurors go back and listen to the statement again themselves. It will be the defendant's own words that admit to the crime or certain elements, or put him at the scene. Subtle things may come across in the recording that can help determine the outcome of the case. How did the defendant sound? Was he hesitant, embarrassed, apologetic, or arrogant? When the jury has the ability to actually hear the defendant, they can get a more complete understanding of the statement.

With no recording, it's a different story. The jury only gets the words of the defendant as told by the witness on the stand; they don't get to hear the defendant. Presentation of the evidence will not be nearly as smooth. Often, the officer will have a multi-paragraph section in his report containing the defendant's statement. The officer will have to convey to the jury either by memory or by frequently referring to the report. Often, follow-up questions are required so the state can get out all of the necessary points in the statement.

Then there is the defense attorney's cross examination. The main feature of the cross examination will be that there could have been a recording, that officers have all kinds of means to record at their disposal, and that there isn't a recording in this case. The jury will be told that they will have to "take your word for it." This can be an effective cross examination. The defense attorney will make the same points during closing, where a lot of time will be spent discussing the ease with which officers could have recorded the interview or statement, and the fact that they just chose not to do it.

Anything a defendant says should be recorded, if possible. Of course, there are quick, unexpected, spontaneous statements that won't be recorded. A quick, "that's mine," when an officer finds some drugs in a vehicle, won't be caught on tape, but jurors will understand that. Jurors will be less understanding when an expected statement, which will include any statement resulting from any police questioning, wasn't recorded. There's a good chance a reasonable juror will feel that a recording of the defendant's statement is the truth regarding that statement, in the same way a patrol car video will show the truth of what happened outside of the patrol vehicle. The same goes for retail theft cases, where a store video will show the truth of what the defendant did inside the store, and undercover drug sale cases, where a hidden camera video will show the truth of the identity of the suspect. Jurors want recordings.

The defendant can be recorded without his knowledge or consent. *Blake v. State* 972 So. 2d. 839 (Fla. 2007), a Florida Supreme Court case, confirms prior case law on this issue. In fact, in *Blake*, detectives secretly videotaped a defendant after he refused to go on tape, and the court upheld the admissibility of the recording. In that case, the detectives had the defendant in an interview room with hidden audio and video equipment. In an initial interview he made some admissions, and the detective asked him to give a recorded statement. He refused to be recorded, but agreed to go over the details of the event again. The detectives decided to videotape him anyway, without his knowledge. On appeal, the defendant acknowledged the officers could have simply recorded him without asking him. His contention was that once they asked permission and he refused, the detectives broke an implied promise, making his statement involuntary. The court held that the police conduct at issue, looking at the totality of the circumstances, did not render the statement involuntary. Given *Blake,* and the various ways officers can record a defendant both at the scene and back at the station, and the significance of a recording at trial, it would seem that recording a defendant's interview should be the rule, with very few exceptions.

When recording a defendant interview, keep in mind that the defendant should be doing most of the talking. It is appropriate to use tactics to encourage the defendant to talk and to put the defendant's statements in context, such as setting forth the facts, making accusations, etc. The officer should make a point of getting the defendant to tell it in his own words, with specificity as to the crime charged, and detail, as much as possible, as to dates, locations, and other people involved. If the defendant is a principal, get the defendant talking as much as possible about intent and plan. For example, asking the defendant to detail whose idea the crime was may get the defendant talking about whether he intended to commit the crime, or just happened to be there. We want to lock the defendant in, without leaving him room to make excuses later. We want to play the defendant's words for the jury, not just the defendant responding to long officer monologues with yes or no answers or inaudible mumbles or grunts.

Giving the jury the ability to hear the defendant's statement at trial is often a very beneficial tool to securing a conviction. Efforts by law enforcement to properly obtain recorded defendant statements often lead to positive results in resolving the case by plea agreement or trial.

FROM THE COURTS...

DEFENDANT FOUND TO HAVE NOT INVOKED RIGHT TO REMAIN SILENT

The defendant was charged with First Degree Murder. Law enforcement interviewed the defendant after informing him of his *Miranda* rights. Two hours after the interview began, the defendant stated "I have nothing really to talk about" and then continued engagement with the detectives. The defendant thereafter confessed to the crime. The defendant filed a motion to suppress his confession, arguing that he had invoked his right to remain silent. The trial court denied the motion to suppress and the defendant was convicted as charged. On appeal, the Supreme Court affirmed the conviction, holding that the defendant's statement was fleeting in nature and was neither a clear nor unambiguous invocation, such that detectives would have been on notice that the defendant invoked his right to remain silent. *Martin v. State*, 37 FLW S563a (Fla. Supreme Court September 20, 2012).

STOP AND FRISK – DETENTION

The defendant was charged with burglary and filed a motion to suppress evidence obtained while he was being detained by police. The facts on which the motion was based were that officers encountered the defendant near a burglary scene. After he gave them evasive answers and they learned that he was a suspect in other burglaries, they placed him in the back seat of a patrol car without handcuffing him and transported him less that one half block to the scene of the burglary they were investigating. There they determined his shoe prints matched those at the scene. The trial court granted the motion to suppress ruling that the officers exceeded the scope of a legal detention by transporting the defendant to the scene. On appeal, the First District reversed, holding that the detention did not extend beyond the immediate vicinity of the initial stop and thus was legal. *State v. Hannah*, 37 FLW 2304 (Fla. 1st DCA Oct. 2, 2012).

PRESUMPTION THAT DEVICE IS TESTED AND WORKING PROPERLY

A county court judge in Brevard County ruled that section 316.1905(3)(b), Florida Statutes, is unconstitutional. That statute creates a rebuttable presumption that a speed measuring device has been timely tested and is working properly upon the production of a certificate to that effect. On appeal, the Fifth District reversed, holding that the statute is constitutional. *State McEldowney*, 37 FLW D2464 (Fla. 5th DCA Oct. 19, 2012).

http://www.sao10.com

Bartow Phone Numbers:

Switchboard	**534-4800**
Misdemeanor Intake	**534-4927**
Misdemeanor	**534-4926**
Domestic Violence	**534-4861**
Felony Intake	**534-4987**
Felony	**534-4964**
Investigations	**534-4804**
Violation of Probation	**534-4803**
Child Abuse	**534-4857**
Homicide	**534-4959**
On Call Phone	**860-8243**
Worthless Checks	**534-4874**
Juvenile	**534-4905**
Main Fax	**534-4945**
Witness Management	**534-4021**
Fax	**534-4034**

Officers can submit their vacation to Witness Management at the following email address:

witmanagement@sao10.com

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