HANDLING TIPS

Materials from
Greg MacAleese, Founder of Crime Stoppers
&
Judge Richard W. Carter (Ret.)

BIOGRAPHICAL SKETCHES

GREGORY B. MacALEESE

Greg MacAleese, 58, is the founder of the highly successful *Crime Stoppers* anti-crime program. Working as a violent crimes detective with the Albuquerque Police Department in 1976, MacAleese was convinced that a lack of public involvement was a major reason for the city's exceptionally high crime rate. He identified two major reasons why most citizens did not want to get involved in fighting crime – fear and apathy. He designed *Crime Stoppers* to specifically attack these two problems.

To overcome a citizen's fear about retaliation from the criminal element, he developed a system in which people can call a special number, tell what they know about a crime, and remain completely anonymous. To overcome apathy, he created a reward program that pays cash for information that leads to the solution of a crime and the arrest of a suspect. The reward fund is comprised entirely of donations from the community and is administered by a civilian board of directors.

MacAleese also wanted to make his new program – which he named *Crime Stoppers* – as high-profile as possible. Each week he would select an unsolved crime and reenact it for television, broadcast a 60-second synopsis of the crime for radio, and write an in-depth story about the crime and the victims for newspapers. *Crime Stoppers* became an instant success. The first crime selected as the "Crime of the Week" – the killing of a young gas station attendant – was solved within 48 hours after the reenactment was shown on television. In the first year of operation 298 major cases were solved through calls from citizens.

In 1977, MacAleese was selected as the National Police Officer of the Year by the International Association of Chiefs of Police/*Parade Magazine*. In 1984, *Esquire Magazine* selected him as one of 200 people under the age of 40 who had made a significant difference in America. MacAleese was in the forefront of advancing the expansion of *Crime Stoppers* throughout the world. Today there are more than 1,500 local *Crime Stoppers* in 24 countries around the world. More than 1,000,000 major crimes have been solved by *Crime Stoppers* programs and almost $7 billion worth of stolen property and narcotics has been recovered. The programs have paid out more than $70 million in rewards. *Crime Stoppers* was used as the model for "America's Most Wanted" television series and "Unsolved Mysteries." In 1991, MacAleese was presented with the FBI Director's "Community Leadership Award" for his crime fighting efforts.

Currently, MacAleese is working on a book about the history *Crime Stoppers* and he has joined with Richard Carter to develop the *M/C Training Institute*. In addition to his work on *Crime Stoppers*, MacAleese has also produced a number of television specials about crime, including an Emmy-award winning series about the effects of illegal drugs. He is also a very active inventor and holds four patents on technologies designed for law enforcement and the military. He resides in Albuquerque, New Mexico.

Biographical Sketch of Richard W. Carter

Judge Richard W. Carter (Ret.) is a former judge of the Arlington Municipal Court and is the current Executive Director of *Crime Stoppers International, Inc.*, and Director of Legal Services for *Crime Stoppers of the United States of America, Inc.*

He served two terms as Chair of the Texas Crime Stoppers Advisory Council under Texas Governors White and Clements.

Richard Carter is the former County Attorney of Hunt County, Texas (Greenville), and former Police Legal Advisor of the Waco Police Department. He is a past Chair of the Legal Officers Section of the International Association of Chiefs of Police, and the Municipal Judges Section of the State Bar of Texas.

Richard Carter is a former member of the faculty of the Journalism Department of Baylor University, and has also taught law enforcement courses at several other colleges and universities.

He has written numerous articles published in law enforcement periodicals, and is the author of several books, including: Court Security for Judges, Bailiffs & Other Court Personnel; The Crime Stoppers Case Digest (Volumes I & II); All Known Crime Stoppers Statutes with Commentary; and Sometimes Justice.

Judge Carter has been active in Crime Stoppers since 1981, when Crime Stoppers founder Greg MacAleese recruited him to assist in training Crime Stoppers volunteers and professionals. In June of 1992, he received a "Certificate of Special Congressional Recognition" for his work in crime prevention.

In addition to his work with Crime Stoppers, Richard Carter represents law enforcement officers for the *Combined Law Enforcement Associations of Texas* (C.L.E.A.T.); and serves as General Counsel for *Texas Police Athletic Federation, Inc.* (Police Olympics); and is on the board of directors of *MassTech USA, Inc.* and *TipSoft Pro, Inc.*

Richard Carter enjoys playing tambourines/percussion and singing backup vocals for professional bands and recording artists in his spare time. He is an active member of Local 72-147 of the American Federation of Musicians.

Kevin Anderson

Kevin was born and raised in Nacogdoches Texas, leaving only to attend Texas A&M University where he graduated with a BS in 1983. After returning home he began developing his own computer software for the recently unveiled IBM PC, and has been deeply involved with software and website development ever since. He owns several companies, one of which is *Anderson Software & Internet*. Other ventures include *Anderson Record Service*, *Anderson Med-Copy*, *Anderson Video Productions* and he was a co-founder of *G/K Enterprises, Inc.* which developed a unique mineral-vitamin supplement designed specifically for wildlife which has recently been acquired by *Tecomate Wildlife Systems*.

Kevin is married and has two daughters aged 19 and 15. He is actively involved in emergency management and the pursuit of severe weather and currently serves as the ARES District Emergency Coordinator for NE TX, RACES county liaison to the state EOC and Skywarn Coordinator for East Texas, which is an extension of the National Weather Service. Kevin also created the WX-TALK web based conference server which links emergency communications repeater systems together on demand and serves as the VoIP-WX Emergency Net Manager for the National Hurricane Center, which utilizes the WX-TALK technology, as does the NWS. Kevin has received numerous accolades from both the National Weather Service and the National Hurricane Center for his technological and Emergency Net Mgmt contributions, along with being specially recognized by NASA, FEMA and many other alphabet agencies for his instrumental emergency communications interoperability leadership role in the Shuttle Columbia Recovery Operations which unfortunately occurred right in his home county of Nacogdoches, Texas.

He has served on his local *Crime Stoppers* Board for 8 years, being Chair for 3 of those years. He has also served on the *Texas Crime Stoppers Association* board and is currently the Region 10 Director on the *Crime Stoppers USA* board and Chair of CSI's IT and Technology Committee. Kevin has served as webmaster for Nacogdoches Crime Stoppers, the Texas Crime Stoppers Association, Crime Stoppers USA and Crime Stoppers International. He is also the administrator for the National and International WebBoards and has recently taken on the role of membership database administrator for CSI and CSUSA.

Six years ago, Kevin also developed the world's leading Crime Stoppers Tip Management Software, *TipSoft,* which continues to help set data management standards in the industry today. *Anderson Software* has also recently released a cutting edge online application designed to provide the seamless integration and reception of truly secure and anonymous tips submitted through the internet and it is fast becoming yet another industry standard.

Kevin has taught numerous internet and technology classes at State and International conferences and is a two time recipient of the Crime Stoppers International President's Award of Recognition for his outstanding contributions towards the advancement of Crime Stoppers.

INFORMANTS

INFORMANTS:

Motives

MOTIVES OF INFORMANTS

FEAR: Some people may become informants because they are afraid of the law or of their criminal associates. Friends or relatives often inform in an effort to remove a loved one from a life of crime. Some investigators find that at certain times they can, through fear, cause an individual to ferret out information. This fear will eventually loosen its impact when other motivations supersede his fear. At that point, there is little hope of regaining the informant's cooperation—at least as far as fear is concerned.

MERCENARY: This type of informant provides information for the sole purpose of financial gain. His interest is to sell what he knows for the highest price. The information obtained from him is generally good, as this is his business and his livelihood. However, detectives and police officers must use caution since these types of informants can be dangerous. They can sell out to the highest bidder or sabotage an investigation by providing misleading or completely false information

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REVENGE: A person my retaliate against those who have taken advantage of him, or may have injured him or a loved one. This person is acting on a grudge and may exaggerate or make a report that is completely erroneous. His motivation is simple: to get even for a real or an imagined wrong.

GRATITUDE: In this instance, the informant is willing to cooperate as an expression of appreciation for the investigator's interest. Many valuable informants have been developed by a detective showing interest and perhaps care for a criminal and his family, while he's in custody, or by the investigator's assistance in other ways such as helping the criminal find a job upon being released from prison. This not only establishes a good rapport, but also often aids in his rehabilitation. There are many informants who assist police as an expression of gratitude for previous consideration and concern on the part of the officer.

GAIN: A person who's incarcerated may provide information in order to obtain a sentencing reduction or to obtain a privilege such as extra cigarettes.

COMPETITION: This person is usually a criminal who wishes to eliminate competition by informing. By eliminating rivals, the informant can take over the action. Often false information is provided to divert suspicion from themselves or to attempt to gain information from the investigator.

REFORM MOTIVE: This person is repenting for past transgressions and wishes to set the record straight—at least in his own mind.

DEMENTED: A few people provide information because of a peculiar quirk in their personality. Generally, such people are more of a bother than they are of value. However, they should never be cut short; give them an opportunity to tell their story, and then check it out. There may be that one chance that the information they give you will make the big case.

INFORMANTS:

Cultivation of Informants & Corroboration by Surveillance

INFORMANTS, SURVEILLANCE, AND OTHER SOURCES OF INFORMATION

"Good informant, good case. Bad informant, bad case. No informant, no case." (Police saying)

The ability to be resourceful at information gathering and collection is the key determinant of success at policing and with criminal investigation. When police are lacking witnesses (which is often the case), especially eyewitnesses, dealing with sophisticated criminals, or not getting much out of the crime scene evidence, they turn to tried and true methods of law enforcement -- informants and surveillance. Other sources of information also exist that are either public or private, open or confidential, and the Internet, of course, has become a tremendous reservoir of open source information. Use of informants is the more legally permissive, yet ethically repugnant activity; and use of surveillance is the more legally regulated, yet ethically sound activity. That's because informants are often used in the loose, early phases of an investigation to develop leads, and the activity of managing informants almost always involves compromising the integrity of law enforcement. Surveillance, on the other hand, is a well-established craft involving technique and gadgets, and is almost always used to seal the fate of a target who has most likely already provided the police with enough facts to establish probable cause. At least that's my opinion, but there are those (Marx 1988) who think surveillance is the greater evil, and there are those (Madinger 2000) who think informants are just another way ethical citizens can get involved in law enforcement.

It's important to note at the outset that use of informants and surveillance should be methods of last resort. These are not methods for screening-out, or eliminating potential suspects from further consideration; quite the opposite, they "screen-in" or incriminate more suspects than usual (Gill 2000). These are methods that are expensive, time-consuming, and controversial. They are inherently stressful and dangerous, as risky as undercover work. Any and all information obtained from such sources, including open sources, should be regarded as untrustworthy until it is corroborated by other sources and/or converted from information into intelligence. The word intelligence usually means information that has been subjected to analysis and synthesis. It also usually means that the same information is coming from different sources and has been checked out, or tested, as reliable.

CULTIVATION AND MANAGEMENT OF INFORMANTS

A cultivated source (as opposed to a regular source) is neither a victim, witness, or suspect in an investigation involving them or against them, but is someone with connections to the criminal underworld that is able to tell you things that are about to happen. *Cultivated sources make the best informants.* Apprehended criminals who turn informants (or "flip" as its called) in hope of having their charges dropped or reduced have NOT been cultivated. Their value is worthless because evidence law sees them as saying or doing something out of self-interest. At law, there is a presumption of truth in anything someone says or does against their self-interest or safety, not in their self-interest if criminal charges are pending against them. Ideally, you want active informants reporting information about future crime, not witness informants for past crimes. Likewise, jailhouse informants (or "snitches")

Cultivated sources typically include people doing business around an area where criminals conduct their business. Examples include taxi drivers, hotel employees, airline employees, automobile salespeople, doormen, gun dealers, bartenders, private investigators, apartment managers, package delivery employees, and proprietors or employees of restaurants. The idea is that such people can get as close to criminal suspects as possible (as, for example, their regular barber or prostitute) without getting so close you're treading on privileged relationships (as, for

example, their wife or psychotherapist). It should be obvious by now that these types of informants constitute a deviant street network of eyes and ears for the police. By using such sources, you are looking for signs of crime in the making. You are NOT doing infiltration or undercover work. If anything, you are doing the equivalent of espionage work by setting up a ring of spies, or agents-in-place. All you have to do in managing such people is keep them from doing or provoking criminal things, but also keep them close to their own sources of knowledge about criminal happenings which you conveniently check out for corroboration purposes.

It used to be common for each and every police officer to have their own set of informants or deviant street connections (as described above). Today, most police departments only allow (and encourage) their detectives to cultivate informants, but there are inconsistencies in how they are registered and handled. Federal agencies have always held to the practice of registering informants to the agency (almost as quasi-employees), but municipal agencies tend to register (when they do register or record the informant) to the individual detective. This creates the problem of lost informants (nobody contacts them anymore) when a municipal detective retires or leaves. There is also the problem of how to disseminate the informant registry within the police department (the Chief usually keeps it secret) because you don't want other officers arresting or messing with your informants.

When an informant is on the payroll, they are usually registered because the law requires financial auditing. They are also most likely to hold the status of confidential informant, although this term technically refers to informants who have some special knowledge about a past or future crime and are potential targets for violence and revenge. Confidential informants, or CIs, are allowed to be referred to as anonymous or unnamed affiants in affidavits, do not appear on any other legal documents, and never have to be disclosed in court or via any discovery process.

The management of informants is mostly a matter of knowing what motivates them, and always making sure this motivation continues to have some currency. There are many motivation-based typologies of informants in the literature. Osterburg & Ward (2000) present one that distinguishes the following:

- volunteer informant -- usually an eyewitness to a crime or jealous spouse with specific information about vice activity or income tax evasion motivated by civic duty or vanity and kept motivated by gratitude
- paid informant -- usually someone involved in a crime with particulars about a person they feel the police should know about and motivated by revenge or money and kept motivated by money
- anonymous informant -- usually someone with precise or imprecise information about suspicious activities or a crime that is being planned or they believe is not yet discovered by police and motivated by repentance and kept motivated by reward or gratitude

Another useful typology is presented by Weston & Lushbaugh (2003) who distinguish the usefulness of the informant as well as the quality of their information:

- basic lead informant -- usually a friend or acquaintance of a criminal with any number of possible motives who is most useful and accurate at revealing the whereabouts or geographical location of persons or property

- participant informant -- usually a go-between or arrestee turned informant who helps police instigate a drug sting or reverse transaction or lure a suspect into surveillance

- **covert informant -- usually someone deep inside a criminal organization with a falling out or difference of opinion and wants to provide spot intelligence over a period of time as long as their identity is protected and a pleasant future guaranteed for them**

- **accomplice-witness informant -- usually a co-defendant in a criminal case who agrees to testify for the prosecution and/or do one last undercover operation (by being wired for sound) in return to the package deal of immunity and the witness protection plan**

Finally, there is the oldest typology of motives which has been around for some 40 years simply because they never change (Harney & Cross 1960):

- **fear -- people who feel threatened by the law or by other criminals (*most police believe this is the best motivation*)**
- **revenge -- people, like ex-wives, ex-girlfriends, ex-employers, ex-associates, or ex-customers who want to get even**
- **perversity -- people who are cop wannabes or think they're James Bond and/or hope to one day expose corruption**
- **ego -- people who need to feel they are smart "big shots" and/or outwitting those they see as inferiors**
- **money -- people who, like mercenaries, will do whatever it takes if the money is right**
- **repentance -- people who want to leave the world of crime behind them and/or citizens fed up with crime**

Proper handling of informants requires reward and control (Hight 2000). There should be some system of departmental awards or rewards, but at the same time, criminal and deviant activity should not be condoned. Disastrous consequences can result from becoming too informal, too unprofessional, or too involved in relationships with informants. The keys to success at working an informant, according to Madinger (2000) are MOTIVATION + ACCESS + CONTROL. You only have a good informant if all three of these are present. The most precious asset you have in working an informant is trust. An informant must trust that you will always be true to your word, and that everyone all the up from the lowest ranking police officer to the chief prosecutor will keep their identity secret.

LAWS REGARDING USE OF INFORMANTS

There are legal restrictions on how far law enforcement can go in keeping an informant's identity a secret. The general rule is that confidentiality (as in "confidential informant" or "affiant") can be maintained if the informant was used in the early stages of a case, say the reasonable suspicion stage, not the probable cause stage, and most definitely if the informant is not required to be a witness at trial. In some situations, however, the Jencks Act or court decisions involving *Brady v. Maryland* may be invoked, forcing the prosecutor to at least turn over a transcript of statements made by the informant. The extreme situation would require a judge to agree that exculpatory information might be found by revealing the informant's identity (an unlikely scenario). Most prosecutors, however, would drop the case or reduce the charges in honor of a police promise to maintain confidentiality.

Courts have always recognized police use of informants a historical tradition with no inherent moral weakness (*U.S. v. Dennis* 1950). Probably the most significant case in recent years was *Hoffa v. U.S.* (1966) in which the Court considered, among other things, whether a police

informant must identify themselves as working with police under certain conditions such as when they are recruiting other informants. After all, there is a precedent like this in espionage law. The opinions in *Hoffa* and a subsequent case (*Maine v. Moulton* 1985) yielded a requirement that police admonish their informants to act natural and not try to draw out any particular incriminating statements that would constitute the functional equivalent of police questioning.

Courts will not tolerate the use of informants for entrapment. Any incriminating statements made to an informant, *in response to the informant's remarks, which prompted the statement*, will be inadmissible. **Entrapment** is defined as inducing a person to commit a crime they did not contemplate for the sole purpose of instituting a criminal prosecution against them. Inducement is perceived by the Courts as persistent coercion or trickery. Placing opportunity in front of the suspect is not normally entrapment, but repeatedly providing them with the same opportunity over and over again could be construed as persistent coercion. Similarly, playing on a suspect's weaknesses such as their vanity or tendency to boast, could be construed as trickery if it was being constantly prompted by an informant. Above all, you should avoid using what is called an "agent provocateur" who is a person who provokes or incites crime, such as someone who urges a mob to riot or urges someone armed and angry to shoot.

Another thing to avoid is referring to your informants as "special employees" or employees of any sort. This used to be fairly standard law enforcement practice up until the late 1960s and early 1970s, and at least one court case did involve a suit by such an informant demanding civil service benefits for years of service. This kind of situation will most likely come up when you need an informant with special skills (such as foreign language proficiency or computer skills), or when an ex-informant puts previous law enforcement experience on their resume. Modern law enforcement practice strongly discourages informants from thinking of themselves as employees.

A final word of advice is NEVER meet with an informant alone. Some have been known to kill their police handler, and others "set up" their handler for assault or robbery, make false claims about physical or sexual abuse, and allege that they were involved in a shakedown or extorted for money and/or drugs. The initial debriefing (establishment of motive and/or registration) of an informant should always take place on the officer's turf, preferably in an office somewhere. Later meetings with the informant can occur in a vehicle, safe house, or public place. A regular schedule of telephone and face-to-face contacts will go a long way at convincing courts that this is a managed informant who follows directions and has some credibility. So too, will **corroboration** establish credibility. Police corroborate, or double-check, what the informant says in a number of ways:

- Cross-corroboration -- the informant's stories are cross-checked against one another for consistency over time
- Background checking -- the informant's details are checked against computer databases
- Other informants -- the informant's information is verified by another informant's information
- Surveillance -- the place where the informant says something is happening is put under surveillance
- Monitoring -- the informant is put under surveillance
- Wiretapping -- the informant's telephone or premises is put under electronic surveillance
- Undercover operations -- the people or place the informant mentions are infiltrated by undercover officers

SURVEILLANCE

Surveillance is the clandestine collection and analysis of information about persons or organizations, or put another way, methods of watching or listening without being detected. Most surveillance has physical and electronic aspects, and is preceded by reconnaissance, and not infrequently, by surreptitious entry (to plant a monitoring device). Surveillance can be a valuable and essential tool in combating a wide range of sophisticated criminal activities, including such offenses as kidnapping, gambling, narcotics, prostitution, and terrorism. There are many different types of surveillance. Peterson and Zamir (2000), for example, list seventeen types: audio, infra/ultra-sound, sonar, radio, radar, infrared, visual, aerial, ultraviolent, x-ray, chemical and biological, biometrics, animals, genetic, magnetic, cryptologic, and computers. A shorter list would include four general types of surveillance: visual; audio, moving, and contact. Here is an outline of the four types from that shorter list:

I. VISUAL (ALMOST ALWAYS USES CAMERA)

A. FIXED (aka STAKEOUT OR PLANT) Locate yourself in another building if possible, always be able to see through windows or doorway

(1) SHORT-TERM (use storefront or apartment)
(2) LONG-TERM (use rooftop or rented dwelling)

II. MOVING (aka TAIL OR SHADOW, uses CONCEALABLE CAMERA, RADIO ALWAYS)

A. FOOT (best to use leapfrogging teams to throw off suspect, always carry something)
B. VEHICLE (works best if combined with bumper beeper)

III. AUDIO (aka WIRETAPPING OR ELECTRONIC EAVESDROPPING)

A. TELEPHONE (tap at any of 4 locations: house, area, main, or bays of central offices)
B. PEN REGISTER (record of outgoing calls, requires less probable cause)
C. TRAP-AND-TRACE (record of incoming calls, requires less probable cause)
D. "BUGGING" OF PREMISES (if both surveillance and surreptitious entry approved)
E. CONSENSUAL (using undercover tactic/accomplice-witness)

IV. CONTACT (aka TRACERS, DYE STAINS--fluorescent stains)

Preparation is key to a successful surveillance, regardless of type. Learn all you can about your subject and the neighborhoods in which you will be operating in. Whenever possible, target information should be individualized, including who the associates are of your main target. If at all possible, it is a good idea to make a thorough RECONNAISSANCE of the areas in which you plan to conduct the surveillance to try to spot any known criminals who are operating in the area. Familiarize yourself with the geography of the area. Learn the names and locations of streets, alleys and passage ways. Observe traffic conditions. Form a mental picture of where various buildings are located.

Effective surveillance requires TEAMWORK. A clear chain of command must be established, and every officer must fully understand what is expected. Everyone involved should be briefed about the operation and any special hazards or problems should be anticipated. Knowledge of a

surveillance operation in progress should be kept secret, but it is often useful to notify other authorities in the area so that suspicious person reports are avoided and two or more ongoing law enforcement operations do not bump into one another. Some experts argue that it takes the resources of twelve operators and six vehicles to put one ordinary individual under effective 24-hour physical surveillance.

Select the best OBSERVATION POST by studying a large scale map of the area, combined with your reconnaissance. The map will allow you to check the angles of view from different locations. When no adequate indoor observation post is available, set one up outdoors. Personnel may pose as repairmen, street vendors, or other such people who would not arouse suspicion. Sometimes cars and trucks can provide cover. Indoor posts, however, permit the most use of equipment, such as spotting scopes, cameras, and recording devices. All personnel at an observation post should have cover stories.

MOVING SURVEILLANCE is complex and offers the chance of surprise. It makes heavy demands on resourcefulness. This is where blending into the environment is most important. Officers should carry extra items such as a hat, glasses, and a raincoat to permit changes of appearance. Remember to carry loose coins and small bills so you can pay exact fare rather than wait for change, and to carry pen and paper to leave a note when necessary. Sometimes, it will be necessary to develop a set of signals that can be used on the street without tipping off the suspect. Such things as how a newspaper is carried or the way clothing is worn works well for this.

On FOOT, a suspect can easily shake off a single follower without too much trouble. If you must follow a subject alone, it is best to stay close behind and keep the subject in sight at all times. When foot traffic is light, it may be best to cross to the other side of the street which is less likely to attract attention from the subject. Be on the lookout for any confederates of the subject as they may be watching to see if he/she is being followed. They may also be waiting to ambush you. Avoid the obvious giveaways: never peek over a newspaper, never sneak peeks from around a doorway. Avoid catching anybody's eye. Be confident. Your own mistaken belief that you have been spotted is more likely to give you away than anything else. If the subject speaks to you, treat him/her as you would any other stranger who did the same thing. If they accuse you of following them, deny it strongly, and say you think they have a mental problem. If you are ever forced to abandon a surveillance, don't return immediately to your office. The subject or a confederate may be following you.

In two-officer foot surveillance, some of the best tactics are to have one officer in front of the subject and another following from behind. Two officers can also LEAPFROG a suspect. In this method, one officer follows while the other moves well ahead, usually on the opposite sidewalk. At some point, the lead officer stops and waits for the subject to catch up with him. When the subject passes, the lead officer moves in behind while the backup officer moves ahead and becomes the lead officer.

VEHICLES used for surveillance should be as unobtrusive as possible. Aerials, communications gear, and other equipment should not be visible. Headlights should be wired separately so the car appears differently at night. In city traffic, the best plan is to stay one or two cars behind the subject and far enough to the right so that the subject is not likely to notice you in a rearview mirror. In rural areas, you must lie further back and know the terrain. Two vehicles can also use the leapfrog technique.

A three-officer or three vehicle tactic is called the ABC method. This allows the officers to change places from time to time, and cuts down on the risk of losing a subject. In foot surveillance,

officer C is called the "rover" and walks along the opposite side of the street. In vehicle surveillance, officer C might be the plainclothes "jumper" who can get out of the car and blend into the foot environment easily. In important cases where it is worth using more than two cars, the PERIMETER-BOX technique provides maximum security while minimizing the risk of detection. One car follows the subject, another leads, and another two maintain positions on parallel routes. Coordination is handled by radio. This works well in both urban and rural areas.

Some of the things a subject will do to evade you include: trying to get lost in a crowd, boarding a bus just as it is about to leave, and entering a building by one door and leaving by another. Smarter subjects will go up to a uniformed officer and point you out as someone who is following them. If the officer delays you, the subject slips away; and if the officer lets you go, the subject knows that you are an officer too. Another trick is when the subject drops a worthless piece of scrap paper to see if you pick it up. A variation on this is when the subject goes up to a passerby, shows him or her an address on a piece of paper, and asks directions. The subject tries hard to make this innocent contact look like a suspicious transaction, and then watches to see if the passerby arouses suspicion and/or is followed. Almost any erratic behavior may be an attempt at evasion. The subject may drive down a one-way street the wrong way or make an illegal U-turn to see if you are determined enough to follow him. If your suspect goes into a building to lose you, take out some fluorescent powder and rub it on your shoes. This way, your backup can track you if they have to. Otherwise, use your portable radio. At least one officer should stay in the lobby of the building, and other officers should cover as many exits as possible. If the subject takes an elevator, watch the indicator. Where the car stops, try to pick up the trail on that floor. If the suspect checks into a hotel, get the room number from the clerk and a record of outgoing phone calls. If the subject goes into a theater, race track, or ball park, the lead officer should attempt to sit right behind the subject. The same applies to bus rides, trolley, or subway. If you can't get in the vehicle with the subject, record the license number, company, place and time. The taxicab company will tell you the destination. If the subject goes into a restaurant, try to finish your meal first and pay your check shortly before the subject leaves. If you suspect loses you in their own vehicle, when you catch up with the suspect again, feel the radiator to see if it's still warm. Also try to read the mileage both before and after a trip. Helicopter support is ideal for this, but many departments restrict usage to rundown situations. If you lose your suspect, don't feel ashamed. They have more ways to lose you than you have ways to keep up. Just try to find the suspect again. Check the home and business address. Use pretext phone calls to family, friends, associates. Station an officer at the point where the suspect was last seen.

REPORTS are especially important in surveillance operations. Each member of the team will have different facts, and these must be correlated to make a complete report. Reports should be detailed. Little things like discarding a matchbook are worth noting. Although your joint report should have differences between officers ironed out, it is OK to have differences of opinion in the report if they can't be reconciled. It is better to have too much information than to omit something that may be significant.

LAWS REGARDING THE USE OF SURVEILLANCE

Courts have always recognized surveillance as slightly un-American, but ever since *Olmstead v. U.S.* (1928), they have been attuned with public opinion that there are some times and places where privacy cannot be expected. This changed with *Katz v. U.S.* in 1967 to a person-based conception of privacy, meaning that privacy exists when and where a person makes reasonable efforts to maintain it (reasonable expectation of privacy doctrine). In 2001, with *Kyllo v. U.S.*, the Court banned police use of thermal imaging systems (and all future technology of that kind) on private residences.

Ex parte and other court orders are required for any and all monitoring of conversations. An _ex parte_ order is good for only a short amount of time, and usually contains a minimizing requirement, which means that officers must cease their eavesdropping or spying as soon as the criminal activity related to the investigation stops. They can turn their surveillance back on once the criminal activity starts up again. Title III of the 1968 Omnibus crime bill still stands as requiring police to exhaust all other options before even thinking about surveillance. A variety of other restrictions exist at the constitutional, statutory, and local levels.

The Title III standard is probable cause (a crime has been or is about to be committed). Title III did not adequately cover national security electronic surveillance, however. That was addressed in the Foreign Intelligence Surveillance Act of 1978, which set up a special review court in Washington D.C., and made the standard a proportionality test (the benefits of surveillance outweigh the harms). Current judicial doctrine also stresses the exhaustion test (standard investigatory methods have been exhausted, failed, are reasonably likely to fail, or are too dangerous to try).

Computer surveillance has some special regulations. In 1986, Congress passed the Electronics Communications Privacy Act, which provides both civil and criminal penalties for violating Title III provisions. Subsequent legislation dealt with appropriation requests by the FBI (circa 1999) to install Clipper Chips on all newly manufactured computers, and then there was Homeland Security's 2002 plan to implement Total Information Awareness by scanning all networked computers. The FBI managed to get approval in 2000 for CARNIVORE, which consists of boxes temporarily attached to the servers of recalcitrant Internet Service Providers (ISPs) which capture the header information from e-mail addresses of interest. Great Britain's Regulatory Investigative Powers (RIP) bill allows similar machines to be permanently affixed to ISP servers, and that nation has also relied heavily upon fixed video surveillance by planting Closed Circuit Television cameras (CCTV) at places appropriate for monitoring populations of interest. Facial recognition systems are often used in conjunction with this type of surveillance. Roving wiretaps, which follow the person and not the equipment, and is an important consideration in the age of disposable cell phones and e-mail addresses, have been used since 1998. The United States National Security Agency (NSA) is prohibited by law from domestic surveillance, so its ESCHELON program cannot be used to intercept electronic transmissions by citizens unless foreign traffic is involved or one of the foreign nations in an exchange agreement does it.

FBI Project CARNIVORE
Project Carnivore is part of a third-generation, online-detection software program called the Dragonware Suite, which allows the Bureau to reconstruct email messages, downloaded files and web pages. Although the FBI has provided minimal information to the public about Dragonware, and little detailed information regarding Carnivore, the system is basically what is referred to as a "packet sniffer," a relatively common technology which examines or 'sniffs" packets of data streams on a network. Project Carnivore can only be utilized by the agency when a group or person is suspected of specified felonies, like terrorism, child pornography or exploitation, espionage, information warfare or fraud. Use of Carnivore is controlled under Title III of the Electronic Communications Privacy Act, so a court order is needed to utilize the tool as well as authorization by a "high-level" official from the Department of Justice before a local United States Attorney office can make an application to a federal court. However, there are "emergency" provisions whereby surveillance is permitted to proceed immediately, when high-level Department of Justice authorization is obtained, so long as a court order is filed within 48 hours.

When places or people are wired for sound, this is called bugging, and it is an entirely different subtype of audio surveillance than telephone taps, pen registers, and trap-and-traces. The U.S. Supreme Court in *Dalia v. United States* 441 U.S. 238 (1979) found nothing inherently prohibitive in bugging a premises as long as both the surveillance and surreptitious entry were judicially approved. Wiretapping is the covert interception of communications content from telephones, telegraphs, fax machines, computers, pagers, wireless devices, and any circuit or packet switch. It is distinguishable from eavesdropping, another type of electronic surveillance, which involves intercepting conversations in rooms or between individuals in person. In the United States, a pen register or trap and trace is authorized by the Electronic Communications Privacy Act of 1986 and similar statutes at the state level. Full wiretaps are authorized by Title III of the Omnibus Crime Control and Safe Streets Act of 1968 and a smaller number of similar statutes at the state level. Wiretapping is also authorized under the Foreign Intelligence Surveillance Act of 1978. Pen registers are used the most frequently, followed by trap and traces as second in frequency of use, and full all-content wiretaps as the least frequently used. The USA Patriot Act of 2001 makes all Internet communications subject to pen register authority. Authorization for a full all-content wiretap requires a proportionality test (the benefits outweigh the harm) and a bona fide intelligence purpose. Authorization for a pen register or trap and trace requires relevance to an ongoing investigation, and in many cases, a judicial order is served on a service provider instructing them to cooperate with authorities.

Wiretap law contains its own exclusionary rule. First of all, no wiretap can be used for quasi-judicial or administrative law purposes. This ensures that wiretaps remain a tool of last resort for serious crimes only, mainly felonies or activities that resemble organized crime, espionage, or terrorism. Secondly, any application for a wiretap must be reviewed and signed by a politically accountable official before going on to a judge for approval. The case of *U.S. v. Giordano* 416 U.S. 505 (1974) made it perfectly clear that any rubber stamping of a political official's signature by their assistant would result in suppression of evidence. Thirdly, there are documentation and notification requirements. Judges must be kept informed of progress, and upon completion, a full wiretap requires notifying all parties, at the time of charging with an offense, that their conversations have been intercepted. A judge, however, has discretion to decide whether other parties should be notified, and which other parties should be notified. The practical effect of this rule has implications for the number of civil lawsuits filed by other parties over the shock at finding out they were wiretapped. Finally, there are executional and minimization requirements. At the time of executing a wiretap order, a professional effort should be made by officials to minimize the interception of irrelevant conversation. This goes beyond the standard protections afforded to privileged communication, such as that between husband and wife, and requires officials to ensure that irrelevant portions of the conversation are deleted and the most relevant portions are retained, all without being done in a manner that suggests the recording has been altered or fabricated in any prejudicial way. Rules of evidence subject wiretap information to the authentication rule and best evidence rule. Unlike wiretaps, pen registers and trap and traces require no notice to persons that their communications have been intercepted. Nor is there any provision for judicial supervision of a pen register in progress. Also, there is no minimization rule.

INTERNET RESOURCES

Competitive Intelligence and Internet Information Gathering
Constitutional Guide to Using Cellmate Informants
Governmentality and the War on Terror: FBI Project Carnivore
Home Page of Prof. Gary Marx
International Association of Law Enforcement Intelligence Analysts
International Association of Undercover Officers

Investigative Resources and Public Records on the Internet
Lecture on Undercover Police Work
Mega-Site on Other (Internet) Sources of Information on People
National Association of Legal Investigators
Police Use of Confidential Informants
Trace Anybody Online (Net-Trace People Search)
Use of Informants in FBI Domestic Intelligence Operations (Cointelpro)

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Last updated: 05/20/05
Syllabus for JUS 315
Syllabus for JUS 205
MegaLinks in Criminal Justice

"FUNNELLING"

ALSO KNOWN AS "FUNNELING"

Founder's Forum

by Greg MacAleese

Funnelling of informants threatens program.

At no time in its 12-year history has Crime Stoppers been more successful.

We are witnessing the rapid international expansion of the program. In the United States, cases are being solved through Crime Stoppers tips at a record rate.

And we have even been flattered by imitators, such as "America's Most Wanted" television show.

:t, I don't think we should sit back and smugly think that everything is perfect with the program.

Recently, several programs have experienced a problem that could threaten the basic foundation of Crime Stoppers - both legally and ethically.

This problem is the "funnelling" of informants into the Crime Stoppers program. "Funnelled" informants are those whose identities are known to law enforcement personnel and who have not directly contacted Crime Stoppers.

In this situation, the coordinator will be approached directly by other officers about giving one of their informants a Crime Stoppers code number. Often this is done under the pretext that the informant will not cooperate with investigators without getting some money and a pledge that confidentiality will be maintained.

This places the coordinator in an extremely difficult position. Should s/he cooperate?

The truth is that if the coordinator provides the code number, the integrity of the Crime Stoppers program has been breached.

...integrity of C/S...breached

This is especially true if the coordinator then presents the case to the Board of Directors without advising them that this is a "funnelled" informant. The board's authority to judge the case on its actual merits is usurped.

On the other hand, if the coordinator does *not* cooperate, this sometimes creates hard feelings between him/her and the investigator.

Occasionally, the coordinator is not even given a choice. The investigator

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Founder's Forum

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will instruct the informant to just call Crime Stoppers with the information, get a code number and not let on that they are already working with the investigator.

The coordinator and the Board of Directors never know that they are being "conned" by both the informant and another member of their law enforcement agencies.

The implications of what I have described here are pretty obvious.

In an extremely important court test of Crime Stoppers, Brown vs. Illinois, the program was described by a defense attorney as being a "sham" organization that was really a "front" for law enforcement. Thus, there would be no corporate protection of Crime Stoppers records and they would be subject to the Open Records Act.

C/S records would be subject to the Open Records Act.

Obviously, the coordinator needs some protection in these instances. The best way to ensure this protection is the creation of an internal policy within the police department, which strictly curtails the use of "funnelled" informants.

The Board of Directors should be consulted by the law enforcement leaders before such policy is developed.

At the Crime Stoppers International Conference in Norfolk, VA, in October, we need to have a workshop to specifically address the development of a policy that covers this situation.

Need policy to curtail "funnelling"

Of course, there is a broader issue at stake in such a situation. **That issue is: "Who is in charge of Crime Stoppers?" Is it the Board of Directors, or is it the law enforcement agency?**

In reality it is both. Crime Stoppers was originally designed to be a cooperative effort among law enforcement, the community and the media. Law enforcement was charged with the responsibility of handling the operational part of the program. The community, through the Board of Directors, was supposed to raise the reward fund and create policy for the operation of the program. And the media was responsible for publicity.

Who is in charge?

Unfortunately, a few programs have drifted from this original design. The Board of Directors has failed to provide proper oversight; and law enforcement, without any policy to follow, has been left with "flying by the seats of their pants" in the day-to-day operation of the program.

Clearly, in these circumstances, abuses are invited. Fortunately, these are extremely rare circumstances and have not caused any serious public relations or legal problems.

However, right from the beginning, I have said that Crime Stoppers is a fragile concept that is only as good as our weakest program.

A program that is improperly managed puts all of us at risk.

As they say, "*Bad arrests make bad laws.*" Well, so do Crime Stoppers programs that operate outside the proper guidelines.

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...how do you shred a computer program?

Dear Richard,

...Or should I call you Judge? Anyway, Greg's article in The Caller on the issue of "funnelling" informants really bothered me. What do you think are some of the legal issues involved in the practice?

(Coordinator's Name Withheld by Request)

Dear Confidential Coordinator:

It is not necessary to call me, you have already written. I see several legal consequences associated with the routing of an informant to Crime Stoppers, after he has given information to a police detective so he can get a Crime Stoppers reward which may be greater than the "snitch money" to which he may be accustomed to receiving from police.

Such an incident could be considered as:

(1) violation of departmental policy which would subject the detective to administration discipline;

(2) a fraud perpetrated against a non-profit, charitable corporation (Crime Stoppers) in order to cause the corporation to part with some of its money (the reward);

(3) the criminal offense of perjury if it is discovered that the informant's identity was known to the detective and he was not really an anonymous Crime Stoppers informant, and the police had testified falsely in court or made untrue allegations in an affidavit for a warrent.

Additionally, all of the detective's and program's cases would be jeopardized in court because of a lack of credibility.

I recommend the following to prevent these consequences.

...rules should...define and prohibit funnelling.

First, rules should be written which define and prohibit funnelling. These rules should be a part of the law enforcement agency's General Orders and a part of either the Bylaws or Standard Operating Procedures of the Crime Stoppers Corporation.

Secondly, there should be training sessions conducted for board members and law enforcement personnel.

Thirdly, the policy should be vigorously enforced and neither board members nor police coordinators should be afraid to ask questions.

Good luck,
Richard

Dear Readers:

I need your help. In advance of the Annual Conference of Crime Stoppers International in Norfolk, Virginia, this October, I am trying to compile all of the various statutes, ordinances, and rules which have been enacted in the United States, Canada, and other nations which relate to Crime Stoppers-type programs. The compilation will be discussed and distributed (free!) at the Conference. Please do not take it for granted that I already have your jurisdiction's Crime Stoppers statutes, or that someone else will send me a copy. I would appreciate it if TODAY you would send me your law. Let Crime Stoppers International and me act as your clearinghouse, so all the information can be shared.

Respectfully requested,
Judge Richard W. Carter
P.O. Box 231
Arlington, TX 76004-0231

P.S. I am asking each CSI Regional Representative to assist me in this endeavor.

SAMPLES OF OPERATIONAL PROCEDURES FOR TAKING CRIME STOPPERS CALLS ON THE TIPSLINE

SAMPLES OF OPERATIONAL PROCEDURES FOR TAKING CRIME STOPPERS CALLS ON THE TIPSLINE:

Crime Stoppers International's Operations Manual (1993)

1993 CSI Manual

Without Crime Stoppers, and without extensive follow-up on the part of the detectives, this crime might never have been solved. It took coordination, good police work, and Crime Stoppers working together to achieve success.

The Bruna Mares case is a perfect example of how Crime Stoppers works.

The Critical Role of Law Enforcement

Law enforcement plays a critical role in the success of Crime Stoppers. In fact, Crime Stoppers exists to help law enforcement solve major crimes. If law enforcement doesn't want this help, then there is no need for the establishment of a Crime Stoppers program.

Law enforcement's role in Crime Stoppers is to provide personnel who will handle the operational part of the program.

It really doesn't matter in the long run how much money is raised for the reward fund or how much publicity is generated for the program if there is no one to handle the calls coming in to the Crime tips line or if there is no investigative follow-up on the tips.

Every successful Crime Stoppers program can trace its success back to the commitment made by its participating law enforcement agencies. That commitment starts at the top.

The police chief or sheriff must strongly believe in the program. Why? Because this will manifest itself in the selection of the law enforcement coordinator, who is the most important individual within the Crime Stoppers program. Being a Crime Stoppers coordinator is one of the most demanding tasks within a law enforcement agency because of its diversity.

Duties of a Crime Stoppers Coordinator

Consider the duties of a Crime Stoppers coordinator:

1) Answer the Crime Stoppers telephone and take tips from the public.

2) Screen the calls, verify the tipster's information and pass the tips on to the appropriate investigator for follow-up.

3) Coordinate with investigators to determine the status of their investigation and if additional information is needed from tipsters.

4) Maintain files for the tips and keep these files updated and accurate.

5) Maintain statistics for the program (Number of Calls, Cases Solved, Stolen

Property Recovered, Narcotics Seized, Assets Forfeited, Prosecutions and Convictions).

6) Select the cases to be publicized as "Crime of the Week."

7) Work with the local media to ensure that the "Crime of the Week" is publicized and the information is accurate.

8) Select fugitives for "Most Wanted" programs and ensure that information is accurate.

9) Appear with members of the Crime Stoppers Board of Directors at public speaking functions.

10) Promote the Crime Stoppers program within the law enforcement agency.

11) Meet at least monthly with the Crime Stoppers Board of Directors.

12) Present a comprehensive Coordinator's Report at the board meetings which will include information on solved cases so the board members can determine how much of a reward a tipster should receive.

13) Coordinate with informants to ensure they will be paid.

Let's examine each one of these duties in detail:

Handling a Crime Stoppers Call

This is where the business of Crime Stoppers begins — with a call on the TIPS line. It is where multi-million dollar drug busts begin. It is where murders and rapes and armed robberies get solved. And it is where some cases are blown.

It's all in the way the Crime Stoppers tip is handled.

The key to success is to TAKE THE TIME TO GET ALL THE DETAILS.

Here's how to do it:

1) **Put the caller at ease.** Most callers, especially first timers, will be nervous. People who are nervous often will try to hurry through a call. They will forget or omit details. Relax them with your tone of voice, which should be friendly and casual. You will be having a conversation with the caller, not an interrogation. If they have questions about how Crime Stoppers works, answer them factually.

2) **Get to the suspect information early** into the conversation. Often this can be an ice-breaker. The caller will often be more talkative once the suspect information has been discussed. However, if the caller is hesitant when the suspect questions are asked, skip over it and go to the facts of the crime and come back to this area later.

3) **Remember to get detailed information.** That means asking specific questions. Don't expect the caller to volunteer detailed information. It will take your probing questions to bring out the key facts. If you have suspect information about an armed robber, ask if the caller knows whether the suspect is right or left-handed. Ask if his voice has an accent. Ask about specific height and weight information. "Average height and average build" does not cut it in Crime Stoppers. If the caller doesn't know specific heights, ask them to make a comparison with someone they know who is 5-feet-five, or six-feet tall. If the information is on a residence, get a detailed description of both the residence and the surrounding area. If the caller is providing information about a drug dealer, find out exactly how much the caller knows. Have they seen the drugs? When? Where? In whose possession were the drugs? What kind of drugs were they? What quantity? How were they packaged? What was the asking price?

4) **Take your time with the caller.** No one is punching a stop watch on these calls. Once you have taken all the information initially, go back over it again to confirm its accuracy. This will give you additional opportunities to amplify the information. And always ask your tipster if they have information on any other crimes or where you might be able to find other people who have information about the case. Surprisingly, some tipsters don't volunteer this information without being asked.

5) **Arrange a call-back time** for the tipster if the information looks good. Having the tipster call back is extremely important since you and the investigators handling the case will be able to evaluate the information and determine where there might be inaccuracies or where more details might be needed. Ordinarily, the tipster should stay in touch weekly. However, on priority cases this might change to maintaining daily contact.

6) **Provide the tipster with a code number** after taking down all the information. There are almost as many methods for creating code numbers as there are Crime Stoppers programs. The easiest method is to log the call in chronologically on the Crime Stoppers Log Sheet (see index) and then give the tipster that number (i.e., your Crime Stoppers program has received 955 calls so therefore the next tipster becomes number 956). Other programs use more complex code numbers, such as beginning the code number with the year, the date, and then the chronological number of the call for the year or day, etc. Whatever system

you use, keep it simple. Don't forget, the tipster has to remember the number! And also remember, some day there will be a new coordinator in your Crime Stoppers unit and simplicity will be invaluable in making a smooth transition.

7) **Determine a suspense date** for the case. Ordinarily, two weeks is an adequate amount of time to get a status report from investigators. However, some cases are a priority and a shorter suspense date is very practical. And some cases contain such generalized information that no suspense date is necessary.

Screening the Information

Whenever possible, the coordinator should screen the information before handing it off to investigators. It does not take much time to work up some of the verification checks.

Here is a very basic screening routine that coordinators should follow:

— if the tipster has provided the name of a suspect, run a computer check to see if they have prior arrests with your department. If so, you probably now have a mug shot, fingerprint classification and a rap sheet.

— once you have a confirmed date of birth, you can run a local, state/provincial or national warrants check on the suspect.

— if the tipster has provided details of a crime committed in your jurisdiction, get a copy of the offense report and closely check the tipster's information against the facts contained in the offense report.

— last, if you have an intelligence unit, you might want to run an inquiry to see if the suspect has an existing file. This might provide you with M.O.'s and a list of associates.

It is very important that the coordinator make every effort to screen the Crime Stoppers tips because it will save the investigators valuable time and will also allow the coordinator to have a better understanding of the quality of the tipster's information.

Coordination with Investigators

No matter how good the tip information is, it is useless if it is not investigated. Don't assume that investigators will embrace a Crime Stoppers tip with open arms. Most of them already have heavy case loads and stopping a current investigation to work a Crime Stoppers tip can be irritating. And some detectives, quite frankly, suffer from that old malady known as "Detective Mystique", which is a subtle way of saying that some detectives don't want to share the credit with Crime Stoppers for a case that is solved.

SAMPLES OF OPERATIONAL PROCEDURES FOR TAKING CRIME STOPPERS CALLS ON THE TIPSLINE:

Crime Stoppers International's Mini-Manual (1999)

Special Broadcasts and Publications

Some programs have established weekly or monthly publications containing mug shots, crime of the week information for multiple crimes, as well as other pertinent crime information. Other items such as missing children and adults, Crime Stoppers events and other fundraising information can be included.

Memorandum of Understanding With Media

Crime Stoppers should have a detailed written memorandum of understanding with all media partners, outlining the Crime Stoppers program's responsibilities to the media and the media's role and responsibilities relating to Crime Stoppers.

HANDLING TELEPHONE CALLS RECEIVED BY THE CRIME STOPPERS TIPS LINE

The telephone number for the Crime Stoppers program should be publicized and used only for incoming tips calls. The telephone should never be unplugged or unavailable for any reason other than repairs. The Crime Stoppers telephone should NOT have call display capabilities, as this eliminates the caller's anonymity. Nor should calls received be recorded[18]. The Crime Stoppers telephone number should be different from police telephone numbers, and often is an easy to remember number, such as one ending in T-I-P-S[19]. The telephone must be manned by Crime Stoppers personnel during office hours, and forwarded after that time to a designated person or location.

Any computers, database or other records must be kept separate from police records. The computer must not be linked or networked to any outside computer or database as this allows Crime Stoppers to maintain its integrity and keep its files secure which is critical for any court challenges that may arise.

When a Tips call is received, the caller should immediately be made to feel at ease. This can greatly increase the amount and quality of the information received and caller's confidentiality should be emphasized. The person responding to the call should always sound enthusiastic and interested.

A standard form should be used for each Crime Stoppers phone call. This ensures that no important questions are forgotten or left out and that all calls follow a standard format for collecting information.

Tipsters are given a code number for reference use for their case[20]. Each program can develop their own numbering system, however, in most cases the numbers are given out to signify the chronological call sequence. They may begin with the current year, followed by the sequential case number. For each follow up call, and reward collection, the caller should refer to this number. Often the tipster is asked to call back every week or so to allow the investigator time to evaluate the information received, initiate the investigation or determine if anything further is needed. This process is often kept up until the tipster is given instructions on how the reward, on a successful tip, can be collected or until the file is closed as unsuccessful, unresolved or cannot be proven.. If the caller does not call back, the file is concluded.

Procedures When Receiving A Call

1. A suggested technique for the initial contact with a caller is to ensure that they are calling from a regular phone line. Inform them that there is equipment available that can intercept cellular and cordless telephone conversations, therefore it would be better for them to use a regular telephone. Additionally, they should be informed that Crime Stoppers does not have call display or electronic recording devices. They should also be told to dial a different number on their telephone after they hang up, so that the following caller cannot press the redial button and determine that a Crime Stoppers telephone call was placed. All of these suggestions are to help ensure the caller's anonymity and to put them at ease.

2. Obtain as much information as possible from the tipster, as if one were attempting to qualify the information to secure a search warrant. No information such as gender etc, that could reveal the tipster's identity should be contained in the tip report. Remember, when dealing with people who are calling, not for the cash award, but out of fear that if they were to be identified they may be the criminal's next victim. This may be the first and last time you speak to them, as they may be too afraid to call again, so ensure you get as much information as possible..

3. If a tipster asks or agrees to work directly with an Investigator, the tipster should be advised that Crime Stoppers would no longer be able to guarantee his/her anonymity[21]. In addition, Crime Stoppers will not pay for subsequent information as it has now becomes a matter between law enforcement and the tipster who is classified as a law enforcement informant. The tipster should also be advised that should they call Crime Stoppers on another matter in the future, there police informant status should be clarified before a new code number is assigned.

4. After obtaining information from the tipster, a code number should be assigned and the tipster should be instructed to maintain their assigned code number in all future contacts regarding that specific incident. Tipsters with pertinent information should be instructed to re-call Crime Stoppers within a specified period of time, to enable investigators to verify the information and determine if there are additional details which need to be gathered from the tipster.

5. Collect Calls will normally be accepted from tipsters in accordance with and at the discretion of the policies of individual programs.

6. Once the information has been collected from the tipster, and the code number has been assigned to the case, a tip report should be prepared. This report should then be passed on to the appropriate police agency as soon as possible. They will then assess the information and contact the coordinator with updates on the case's progress. Information received that is pertinent to another police agency shall be gathered in the manner described and disseminated to the agency concerned via the most appropriate method.

7. When forwarding information packages to any investigative agency, never identify tipsters by gender. Use phrases such "the tipster or caller says", "they said", or "he/she says".

The tip report is the property of the Crime Stoppers program and not the property of the law enforcement agency or any other legal entity. The coordinator is considered to be the custodian of the records on behalf of the program. Disclosure of the report is to be refused, as this may identify the caller and place him or her in danger. In general, the information received as a Crime Stoppers tip will normally be afforded the same protection as information given by a confidential informant.

Once a tipster's information has been developed to a point where arrest and charges are imminent, the coordinator should be notified and a disposition report should be completed with the following information:

1. The information given was/was not found accurate or additional information is required.
2. An arrest was/was not made, or is pending and name and biographical information of the suspect(s).
3. Number, type of case(s) cleared and agency case numbers.
4. A charge was/was not filed, or is pending.
5. Stolen property/narcotics was/was not recovered, including monetary value.
6. Tipster is/is not eligible for a reward. If the tipster's information cannot be con firmed or corroborated, the investigator shall notify the Crime Stopper's coordinator in order for the tipster to be so advised. In addition, information that is already known and recorded from other sources may not qualify for a reward.

REWARDS

Crime Stoppers deals with serious or felonious unsolved criminal offenses and, if a fugitive or wanted program is also being operated, wanted persons. All reward offers will be stated as :

"Crime Stoppers will pay a cash reward of up to $---- for information called into Crime Stoppers which result in the arrest(s) and/or charge(s) of the individual(s) responsible for committing the offense(s)/crime(s). "

The Crime Stoppers Board of Directors, after reviewing the coordinator's report and/or the law enforcement investigator's tip report, will, at their absolute discretion, make a determination if a reward is to be paid to the tipster, and in what amount. They are then responsible for making the reward payment.

In the most unique circumstances, as determined by the Board of Directors, where the purpose of Crime Stoppers may be best served by so doing, the program may:

1. Deal with non-arrestable offenses.
2. Pay rewards to tipsters working directly with investigators, upon written request from the investigator or agency head and based upon the specific detailed request and recommendation of the Crime Stoppers coordinator.
3. Pay rewards to tipsters where there is no arrest or charges filed.(ie; ongoing undercover investigation, long term (years) investigation, etc.)

The coordinator shall not enter into an agreement with any tipster regarding a specified

SAMPLES OF OPERATIONAL PROCEDURES FOR TAKING CRIME STOPPERS CALLS ON THE TIPSLINE:

Texas Crime Stoppers Manual (2001)

H. Operational Procedures

OPERATIONAL PROCEDURES FOR _____ CRIME STOPPERS, INC.

These procedures set forth an understanding between a law enforcement agency and crime stoppers program concerning the law enforcement agency's responsibilities, the crime stoppers program and the law enforcement coordinator in connection with the crime stoppers program. They are designed to guide the board in its deliberation on all matters pertaining to the operation of crime stoppers and to provide sufficient flexibility in handling unique situations.

1. Crime Stoppers Telephones

Telephones are installed in the following locations within the _____County Sheriff's Department, Police Department and/or _____for the purpose of receiving crime stoppers information:

Telephone number _____ is used for crime stoppers business only and is kept free for incoming calls. The crime stoppers telephone shall not be unplugged for any reason without the consent of the board other than for repair.

The crime stoppers telephones shall be manned by crime stoppers personnel between the hours of _____ a.m. and _____ p.m., Monday through Friday. The crime stoppers telephone shall be forwarded to _____at 5:00 p.m. each day and shall be answered by the _____during other than normal duty hours/days and during the absence of crime stoppers personnel.

2. Handling Incoming Calls

When a crime stoppers call is received, the following procedure is used:

1. Obtain as much detailed information from the informant as possible.
2. Attempt to secure sufficient information from the caller as if one were attempting to qualify the information to secure a search warrant.
3. Always bear in mind that ALL informants calling the crime stoppers telephone EXPECT to remain anonymous; therefore, no information, which would tend to show or lead to the caller's identity, should be contained in the tip without the express consent of the caller.
4. If an informant asks or is requested by the coordinator to work directly with an investigator, the coordinator shall: **Advise informant that this can jeopardize his/her anonymity and information could be revealed in court that might lead to the discovery of his/her identity.**
5. The informant is ONLY eligible for ONE reward and shall not be paid by both the law enforcement agency and crime stoppers. Write department policy to preclude such activity.
6. A confidential informant working for a law enforcement agency shall not be automatically eligible for rewards by crime stoppers.
7. After obtaining information from the informant, and if it is determined that the information appears to be pertinent, assign the informant a code number.
8. After assigning the informant a code number, the informant shall be instructed to maintain his/her code number in all future contacts with crime stoppers.
9. Informants who appear to have pertinent information should be instructed to re-call crime stoppers within _____ hours/days. This allows investigators sufficient time to verify and confirm the information received or to have the coordinator request additional information on the investigator's behalf. Officers may use their discretion in determining call back dates as each case may vary.
10. Collect calls: Normally, collect calls are accepted from informants who identify themselves by their assigned code numbers. Otherwise, collect calls are accepted at the coordinator's discretion.
11. Information received, pertinent to another law enforcement agency, shall be taken in the manner prescribed and disseminated to the agency concerned via the most appropriate method(s) depending upon the circumstances and urgency.

3. Disposition of Information Received

1. Once information is received from an informant and a code number assigned and call-back instructions (if any) are given, the coordinator receiving the information shall prepare a crime stoppers tip report. Although not every program uses one, there are tip management software programs available that assist in statistical reports and handling cases. The information is referred to an investigator as soon as possible or the information may be referred to a supervisor for assignment.
2. The investigating officer assigned to the case shall attempt to clear the case in question, using the information available as a tool to solve the case and/or recover stolen property or seize narcotics. If during the investigation the investigator(s) feels that additional information is needed, the investigator notifies the crime stoppers coordinator to obtain additional information. The coordinator requests that the informant call back as often as necessary to check on the case progress and provide any additional information and/or clarification. Keep in mind that the informant's anonymity is always safeguarded.
3. Once an informant's information is developed to a point where arrest and criminal charges are imminent, the crime stoppers coordinator is notified, and a disposition report completed with the following information.
    1. The information given was/was not determined as accurate, or additional information is required;
    2. An arrest was/was not made, or is pending;
    3. Number, types of case(s) cleared and agency case numbers;
    4. Criminal charges were/were not accepted, and type criminal charges filed, if any;
    5. Stolen property/narcotics was/was not recovered including monetary value;
    6. The informant is/is not eligible for a reward; (If the informant's information is not confirmed or corroborated, the investigator shall notify the crime stoppers coordinator in order to advise the informant); and
    7. Defendant's name and biographical information.
4. When deemed necessary and advisable, informants are encouraged to communicate directly with the investigator to enhance clarity of the information exchange. Investigators are advised that no attempt is made to obtain the caller's identity. Callers are advised that disclosure of their identity to the investigator is at their discretion and can jeopardize their anonymity. Information could be revealed in court that might lead to the informant's identity.

4. Rewards

a) Crime Stoppers deals primarily with unsolved offenses and fugitives wanted for felony offenses. Cash reward amounts are discretionary and set by the board of individual crime stoppers programs. Reward offers can be advertised as:

> CRIME STOPPERS WILL PAY A CASH REWARD OF UP TO $_____ FOR TIPS PROVIDED TO CRIME STOPPERS WHICH RESULT IN THE ARREST AND/OR FILING OF CRIMINAL CHARGES AGAINST THE INDIVIDUAL(S) RESPONSIBLE FOR COMMITTING THE CRIME(S).

b) Under unique circumstances, as determined by the board of directors, where the purpose of crime stoppers is best served, the program may handle and pay cash rewards for misdemeanor offenses.

c) Under certain circumstances, as determined by the board of directors, where the purpose of crime stoppers is best served, the program may pay rewards to informants working directly with investigators. A specific detailed written request by the investigator or agency head and with the coordinator's recommendation is suggested in such cases.

SAMPLES OF OPERATIONAL PROCEDURES FOR TAKING CRIME STOPPERS CALLS ON THE TIPSLINE:

Crime Stoppers USA Manual (1983)

corroborating the informant. In my experience, the assailant likely would keep such gun and evidence of it (ammunition for it, holster or box for it, etc.) in his personal vehicle or residence for easy access and use, and to keep it out of weather or away from thieves.

By James Blackmer

I. SAMPLE LIST OF QUESTIONS TO CRIME STOPPERS TIPSTERS

NOTE: This is just a sample of questions that convey a sense of thoroughness and politeness. These questions, when used with others, can tell you a lot about the reliability of the informant, such as his or her ability to remember details, etc.

(1) Are you calling "Long Distance?"
(2) Where did you first hear about Crime Stoppers?
(3) On what television station or channel? (or radio/newspaper)
(4) When did you see or hear the broadcast? (or read)
(5) Did you watch the entire broadcast? (or read or listen)
(6) What do you remember about the Crime Stoppers broadcast? (or article)
(7) What information concerning the publicized crimes do you have?
(8) Can you give me any more details?
(9) Do you know this information as an actual eyewitness, or did you receive the information from someone else?
(10) If you learned this information from someone else, do you think any other third party knows this information (other than the suspect)?
(11) Even though you do not have to identify yourself or provide any additional information to Crime Stoppers, if you are rewarded by the Crime Stoppers Committee, would you under any circumstances or conditions be interested in either making your identity known to the Waco Police Department as a confidential witness or consider being a trial witness? If so, what conditions? (OPTIONAL?)
(12) Do you have any questions or anything else that you would like to say?
(13) Thank you for calling. You may telephone us again if you like.

J. TAPE RECORDING CRIME STOPPERS CALLS

Many questions are asked about the legality of tape recording in-coming telephone calls to Crime Stoppers. Some questions relate to the taping of conversations between

Crime Stoppers personnel and informants, while the others concern tape recorder answering service devices. Most Crime Stoppers veterans agree that it is better not to record Crime Stoppers calls. Callers will become inhibited if they know that their call is being recorded. Also, keeping tape recordings may lead to the disclosure of anonymous or confidential informants if the recordings fall into the wrong hands or if subpoenaed. As for answering machines using tapes, such devices are frowned upon. Answering machines are no substitutes for a live and thinking Crime Stoppers person. Many telephone callers refuse to talk to a machine, hang up, and never call again.

From a legal standpoint, tape recording a Crime Stoppers telephone line is not "wiretapping" because it is done with the consent of one of the parties to the conversation -- Crime Stoppers. The caller speaks at his own risk and must trust the recipient of the phone call. The tipster takes the risk that his call might be recorded by an instrument at Crime Stoppers office. To place a recording device on the caller's telephone or premises would be another matter entirely, and in most cases would be a federal offense that could result in imprisonment for up to five (5) years and/or up to a $10,000 fine, if not done pursuant to court order.

Generally, if a telephone conversation is being recorded there must be a "beep tone" to warn the caller that he is being recorded. If the Crime Stoppers phone line is a law enforcement line, however, the beep is not required although it is usually used anyway. The beep tone rquirement is a federal law and is also enforceable by telephone companies through their rules called "tariffs."

Again, tape recording calls, as well as the practice of attempting to "trace" telephone calls is not encouraged even when legal. To employ such practices will destroy the promise of "anonymity" which is a selling point and major reason for the success of Crime Stoppers.

K. USE OF HYPNOSIS

Many unsolved criminal cases require extreme and desperate efforts on the part of law enforcement officials. Occasionally, crimes publicized by or reported to Crime Stoppers lead to witnesses who have difficulty in recalling facts. Police, therefore, might consider hypnotizing the witness in an attempt to obtain the information they need. A very serious legal problem may arise later if the witness is needed to testify in court to the information he told police after being hypnotized.

CRIME STOPPERS CASE LAW

The following pages are excerpts from a work by Richard W. Carter which summarize appellate court decisions pertaining to Crime Stoppers in the United States.

A comprehensive set of court decisions are available at no charge to those who send a request to CrimeStoppersLaw@aol.com

People v. Callen, 194 Cal. App. 3d 558, 239 Cal. Rpt. 584 (Cal. App. 1987)

Kathryn Ann Callen's conviction for the purse snatch from an 84-year-old woman in Stockton was upheld upon appeal. A Crime Stoppers tip led to the identification of the defendant in a photo lineup. The defendant argued that the police have a duty to preserve evidence relating to the identity of witnesses who informs on the Crime Stoppers hotline. He also argued that the police may not operate a program which is purposely designed to conceal the identity of eye-witness informants, and that the inability of the police to identify the informant deprived her of a substantial right. The appellate court disagreed.

"We are unaware of any decision holding that the police have an affirmative obligation to determine the identity of an anonymous informant who provides information.

"We are satisfied the benefits of a Crime Stoppers-type program - citizen involvement in reporting crime and criminals - far outweigh any speculative benefits to the defense arising from imposing a duty on law enforcement to gather and preserve evidence of the identity of informants who wish to remain anonymous.

"...that law enforcement officials should not be permitted to act upon anonymous information, however that information is received, unless the identity of the informant can somehow be uncovered, a proposition we find palpably unacceptable. There is no question but that anonymous information often provides a substantial part of the initial investigatory data relied upon by law enforcement agencies. A Crime Stoppers-type program does no more than institutionalize the method by which anonymous information may be fed into the investigation pipeline. Were defendant able to show that Crime Stoppers information - as opposed to information received anonymously through other means - somehow results in a substantial number of innocent people being subjected to criminal inquiry, defendant might have legitimate argument. She makes no such claim. To the contrary, the record reveals nothing more than that Crime Stoppers is a conduit through which information is funneled to police."

POLICE HAVE NO DUTY TO ASCERTAIN IDENTITY OF ANONYMOUS TIPSTERS

CRIME STOPPERS PROGRAM IS CONSTITUTIONAL

State v. Sanford, 237 Kan. 312, 699 P.2d 506 (Kan. 1987)

Denied defendant's motion to discover the identity of a Crime Stoppers informant, citing its earlier decision in *State v. Pink, 236 Kan. 715, 696 P.2d 358 (1985)*. Also, court denied admission into evidence records a phone call of unavailable confidential informant (not the Crime Stoppers caller) who told police that defendant was not guilty. Detectives knew confidential informant and did not believe him to be credible, he was no longer around, thus the hearsay was inadmissible. Murder conviction upheld.

DISCLOSURE OF INFORMANT'S IDENTITY DENIED

EVIDENCE OF INCREDIBLE TIPSTERS CALLS "HEARSAY"

Whalen v. Commonwealth, No. 87-CA-685-MR, Kentucky Court of Appeals, Slip Opinion (April 29, 1988)

Defendant's conviction for theft is reversed because the trial court allowed the prosecution's witness to give a lengthy account of a Crime Stoppers caller's telephone conversation with "very detailed information regarding the theft," overruling the hearsay objection of the defense.

The appeals court held that under the circumstances the defense "was entitled to confront and cross-examine the speaker."

HEARSAY

RIGHT OF CONFRONTATION

Askew v. Commonwealth, 768 S.W.2d 51 (Ky. 1989)

A Crime Stoppers tip developed the suspects who were convicted of robbery and murder in Louisville at the Good Times Bar. Although no fault of Crime Stoppers, the Kentucky Supreme Court reversed the convictions because the trial judge erred by allowing into evidence prejudicial hearsay evidence.

HEARSAY

TIP SOLVES CASE

State v. Cain, 717 P.2d 15 (Mont. 1986)

Defendant's conviction for conspiracy to commit arson and attempted criminal mischief was affirmed on appeal.

The Montana Supreme Court ruled that the anonymous Crime Stoppers tips were 'hearsay,' but the defendant's failure to object at the trial caused the Supreme Court to refuse to reverse the conviction. The court distinguished the permissible use of hearsay tips as an element of probable cause from the impermissible use of the tips as evidence in court.

At Page 19:

"...the use of anonymous tips as an element in obtaining a search warrant has been sustained by the United States Supreme Court in *Illinois v. Gates*...where other corroborating evidence is shown."

"...Therefore, as a general rule, we do not disapprove of the use of anonymous tips as one element in the determination of probable cause for a search warrant."

At Page 21:

"However, a word of caution to the prosecutor is in order. We condemn the use of anonymous tips as evidence at trial. The jury has no means in which to test the reliability of the informant. Furthermore, serious questions arise as to a defendant's Sixth Amendment and confrontation rights. There was no need to introduce the content to the tips for any reason in this case. By taking such actions in the future, the prosecution runs the risk that a conviction might be overturned on appeal. Also, it is highly unlikely that in future cases defense counsel will fail to object to such testimony, which would present a different question to the court."

SEARCH WARRANTS

HEARSAY

CONSTITUTIONAL RIGHT TO CONFRONT WITNESSES

State v. Patton, No. C-900028, Court of Appeals of Ohio, Hamilton County, Slip Opinion (January 23, 1991)

Defendant's conviction was for kidnapping and aggravated robbery in connection with the abduction of a pizza delivery driver. Several weeks after the incident, Cincinnati Police received an anonymous Crime Stoppers tip that helped solve the case.

Upon appeal, the defendant alleged that the trial court erred by allowing into evidence prejudicial testimony regarding the Crime Stoppers tips. The appeals court upheld the convictions by saying:

> "...we hold that any error which may have occurred in the admission of the testimony at issue was not prejudicial. There was ample evidence linking appellant to the crimes apart from the Crime Stoppers tips..."

TESTIMONY ABOUT CRIME STOPPERS TIP NOT ERROR

State v. Burnett, No. C-900680, Court of Appeals of Ohio, Hamilton County, Slip Opinion (October 30, 1991)

The defendant's murder conviction was reversed upon appeal because the trial judge erred by failing to declare a mistrial after striking the entire testimony of state witness Cathy Nolte.

Nolte's testimony was suspect according to the court, her testimony was:

> "that she had called Crime Stoppers after she heard, on May 4, 1990, a man, whom she later identified as the appellant, state that he had used a baseball bat to beat man in Price Hill in December and that the victim died. Nolte further testified that Burnett said he had disposed of his bloody clothing, gym shoes and a baseball bat in a waste container at or near an apartment on Bannign Road. During her testimony at the trial, Nolte said that she told the grand jury that Ken Hamilton had told her what Burnett had said and that she had not heard it directly from Burnett as she reported to Crime Stoppers. At the trial, when she reaffirmed Hamilton as the source of the information to which she testified, the court struck Nolte's entire testimony."

HEARSAY FROM CRIME STOPPER INFORMANT

Jackson v. State, No. 01-85-00873-CR (Tex. App. - Houston 1st Dist.) Slip Opinion (September 24, 1987)

The appellate court affirmed the conviction and seventy-year sentence of defendant for the robbery of the night clerk at a Houston hotel.

"Appellant's complaint on appeal concerns Detective Paul Schaffer's allegedly hearsay testimony that appellant became a suspect after police received information from both a confidential informant and Crime Stoppers. Appellant argues that his alleged hearsay prejudiced him because it was not directly admissible to prove the State's case....and claims that the evidence had the added effect of impinging on his alibi defense by bolstering the testimony of the complaint....but Schaffer did not repeat the content of the conversations he had with these informant's and such testimony was therefore not hearsay."

(Note: This case can be found at Westlaw 1987: 14627.)

DETECTIVE CAN TESTIFY HE CONSIDERED DEFENDANT A SUSPECT AFTER RECEIVING CRIME STOPPERS TIP WITHOUT REPEATING CONTENTS OF TIP

Palmer v. State, No. 01-87-0330-CR (Tex. App. - Houston 1st Dist.) Slip Opinion (June 23, 1988)

Officer McDonald testified in court that he had received calls through Crime Stoppers that led to a photo spread identification of Gregory Keith Palmer. The officer did not testify about the content of the informant's tip, nor did he offer the informant's tip for the truth of the matter asserted therein. Rather, the officer testified that he acted as a result of receiving the information.

The officer's testimony regarding the receipt of the tip was not hearsay, and if it was, it was not objectionable.

(NOTE: This case can be located at Westlaw 1988: 65701.)

Branch v. State, 774 S.W.2d 781 (Tex. App. - El Paso 1989)

The defendant's conviction for murder was affirmed upon appeal. One of the alleged errors was the trial court's exclusion of a Crime Stoppers videotape re-enactment of the crime. The defendant wanted to introduce the tape to "aid jurors in observing a fair and accurate representation of the crime scene." The defendant also wanted to impeach police officers by showing that the tape existed, because two officers were unaware the tape had been made and broadcast.

The appeals court said the videotape was correctly excluded because it was "hearsay upon hearsay." It was further noted that:

> "the video portion of the tape was prepared, not at the scene of the assault, but in the parking lot of the television station. It was produced in broad daylight, although the offense occurred at dusk. The monologue was the result of two stages of editing and condensing various police reports and witness statements."

RE-ENACTMENT INADMISSIBLE

HEARSAY

Hinote v. Oil, Chemical and Atomic Workers, No. C14-88-00132-CV (Tex. App. - Houston 14th Dist.), Slip Opinion (July 20, 1989)

A Crime Stoppers tip to a sheriff's deputy led to the discovery of a .22 caliber rifle which was used to shoot William H. Hinote. The appellate court found no error in the civil trial judge's admitting into evidence the reference to the Crime Stoppers tip.

In this civil suit, Mr. and Mrs. Hinote were awarded $397,000 in actual and $785,000 in exemplary damages for injuries received during a bitter labor dispute in Jefferson County, Texas.

(NOTE: This case can be found at 1989 Westlaw: 81225.)

CRIME STOPPERS TIP AS EVIDENCE IN CIVIL CASE

Larque v. Crime Stoppers, Inc. of Wichita Falls, No. 139,784-A, 30th District Court, Wichita County, Texas (1992)

In this pending case, Nancy and Dale Larque filed a civil suit alleging that Crime Stoppers was negligent in allowing a murder defendant to obtain a copy of a report which named the plaintiffs as being Crime Stoppers informants who had provided information against the murder defendant. "Over $100,000" is being sought.

CIVIL SUIT

ALLEGED FAILURE TO KEEP PROMISE OF ANONYMITY

Masters v. Eisenbart, 164 Wis.2d 751, 477 N.W.2d 364
(Wis. App. 1991)

A woman's petition for a restraining order, alleged that the Racine County Sheriff's Department received an anonymous Crime Stoppers tip that Robert J. Eisenbart was trying to kill her. The trial judge sustained Eisenbart's objection and agreed that the anonymous telephone calls were inadmissible hearsay. However, the trial judge and the appeals court held that other sufficient evidence existed to justify the issuance of the restraining order.

HEARSAY

DOMESTIC VIOLENCE TIP

ALABAMA

SMITH v. STATE, CR-91-1975 (Ala.Crim.App. 2-1-2002); Willie B. Smith III v. State, No. CR-91-1975.

The appellant also argues that the prosecutor commented on facts which were not in evidence by making the following statement during his closing argument at the guilt phase:

> "Steve Corvin testified that he was the officer in charge of the case. Testified, got numerous reports associated with people who thought they could identify the person, numerous reports from Crimestoppers≥."

The appellant argues that this comment was improper because the officer never testified that he had received reports from ≤Crimestoppers≥. The appellant argues that the only mention of ≤Crimestoppers≥ in the trial related to Roshell's receipt of $500 from ≤Crimestoppers≥ in exchange for her assistance in apprehending the appellant. The record indicates that the appellant failed to object on this ground at trial; therefore, this alleged error must be analyzed pursuant to the plain-error rule. Rule 45A, Ala.R.App.P.

The record indicates that after he had finished testifying, Officer Steve Corvin was recalled as a witness by the State so that the chain of custody could be finalized as to a certain item of evidence in order to properly admit it. The witness was then cross-examined concerning this item of evidence, the jacket, as to where the officer had gotten his information and whether other people had informed him that they had a jacket similar to the one to be admitted. During this cross-examination, defense counsel asked for a "ballpark figure" as to "how many tips you all received." When Officer Corvin responded that he did not have a ballpark figure, defense counsel questioned him as to whether they had received more than 20 tips. The witness responded, "Yes, sir, probably so." Defense counsel then stated, "And probably way on up over that?" The witness responded, "Yes, sir." Thus, the prosecutor had properly argued that State's witness Steve Corvin had testified that the police had received a number of reports and tips concerning this offense. Although he did not testify that the tips came specifically from ≤Crimestoppers≥, any error in citing that source would clearly be harmless. Rule 45, Ala.R.App.P.

However, the record indicates that evidence concerning this telephone call revealed that the appellant telephoned Roshell from the jail on Thanksgiving Day. Roshell testified that it was a three-way call so that his mother was also on the telephone, as well as his sister and his cousin. She testified that the appellant talked about many things and stated that "it was only three people that could have fucked him up" and he indicated that it was either Roshell, Jermaine Norman, or Michael Wilson. He then stated he had "a feeling" that Roshell had done it. Roshell testified that he then stated that "he knew he did it and I knew he did it but he wasn't going to go to court and tell the judge that he did it." Roshell testified that she then telephoned the police to report the telephone call and subsequently, after the preliminary hearing in this case, she received $500 from ≤Crimestoppers. She testified that when she called the police she did not know that there was a reward. She testified on cross-examination that she had been working with the Hoover Police Department giving them information for a few months at the time of the telephone call. She further testified that she had not heard anything about this case. She was subsequently recalled as a witness and on direct examination testified that, after she received the telephone call, she telephoned Steve Corvin with the Birmingham Police Department and reported the conversation on the Monday following Thanksgiving.

Harmless error when officer did not specifically testify that tip came from Crime Stoppers.

KEY v. COMPASS BANK, 2001054 (Ala.Civ.App. 11-16-2001); Annette L. Key et al. v. Compass Bank, Inc., No. 2001054.

On June 30, 1998, a photograph of the plaintiffs taken from the surveillance videotape was published in The Cullman Times, a newspaper of general publication in the community. The caption under the photograph stated, "[t]his bank surveillance photo shows three suspects the Cullman Police Department are looking for in connection with a forgery case." The article, in its entirety, read as follows:

> "Cullman Police Department on Trail of Forgery Suspects."
>
> "The Cullman Police Department is asking for help in catching a forgery suspect and two possible accomplices.

No error by trial court for not disclosing Crime Stoppers documents

RYNEARSON v. STATE, 950 P.2d 147 (Alaska App. 1997); Joleen R. RYNEARSON, Appellant, v. STATE of Alaska, Appellee, No. A-6108.

Lloyd involved a search warrant application that was based, in substantial part, on information given by a caller to a Crime≥ ≤Stoppers≥ hot line. The State argued that the caller could be deemed a "citizen informant". In support of its argument, the State cited two prior decisions in which this court extended a presumption of credibility to anonymous informants. *See Effenbeck v. State,* 700 P2d 811 (Alaska App. 1985), and *Beuter v. State,* 796 P.2d 1378 (Alaska App. 1990). We explained, however, that the State had read too much into *Effenbeck* and *Beuter:*

> [N]either *Effenbeck* nor *Beuter* stand for the proposition that . . . informants of unknown or undetermined status can automatically gain citizen informant status by [anonymously] calling a ≤Crime≥ ≤Stoppers≥ number; to adopt such a rule would simply encourage police to channel calls from their regular informants through a ≤Crime≥ ≤Stoppers line. To the extent that [they] are relevant [, *Effenbeck* and *Beuter*] support the conclusion ...that [an] informant['s] status must be determined by a realistic, case-by-case assessment of the informant's probable motives, as they appear from the information properly before the court.

Lloyd, 914 P.2d at 1287. We also emphasized that it is the government's burden to demonstrate the informant's status as a citizen informant:

> [A] finding of citizen informant status requires at least some circumstantial showing of intrinsically trustworthy motivation. Credibility is not presumed by default: when the information available...does not actually identify the informant as an apparently well-meaning citizen, and when it otherwise sheds insufficient light on [the informant's] identity and motive to dispel the underlying concerns of *Aguilar-Spinelli,* the informant's status as a citizen informant cannot simply be assumed.

Id. At 1287.

The informant's status as a citizen informant cannot simply be assumed

FLORIDA

ALVAREZ v. STATE, 792 So.2d 1255 (Fla.App. 3 Dist. 2001)

Detective Goldblatt also testified that, several months after the robbery, he became aware of a Crime≥ ≤Stoppers≥ tip concerning Clavijo. The tip also mentioned four other men known to associate with Clavijo, Alvarez among them. Alvarez was described as having blonde hair and green eyes, weighing 225 pounds and being 5'11" tall. The victim identified Alvarez as one of her assailants from a black and white photo line-up shown to her by Detective Goldblatt.

Even if the testimony was offered merely to show the steps taken in the investigation, it still should have been excluded. See Keen, 775 So.2d at 272. For these same reasons, the detective's reference to a ≤Crime≥ ≤Stoppers tip as being the link between co-defendant Clavijo and Alvarez should likewise not have been permitted. See Metelus v. State, 762 So.2d 940, 943 (Fla. 4th DCA 2000) (police witnesses are permitted to testify that they were acting on a tip, but are not permitted to provide details of the tip).

Police witnesses are permitted to testify that they were acting on a tip, but are not permitted to provide details of the tip.

BOLIN v. STATE, 793 So.2d 894 (Fla. 2001)

The investigation into Collins' murder proved unavailing until July 1990, when Danny Coby telephoned Crime≥ ≤Stoppers in Ft. Wayne, Indiana, with information about the murder. Danny Coby obtained the information from his wife, Cheryl Coby, who had acquired the information during her prior marriage to Bolin.

Call to Crime Stoppers leads police to arrest

METELUS v. STATE, (Fla.App. 4 Dist. 2000), 762 So.2d 940

[McELHANEY]: Yes, ma'am, I had received numerous Crime> <Stoppers> alerts and numerous complaints.

McELHANEY]: I had received numerous <Crime> <Stoppers> alerts regarding the activities of Dr. Metelus [Defendant] from individuals identifying themselves

as former members or patients that were asking the Sheriff's Office to cease and desist his activities. In the course of my investigation —

Many of the <Crime> <Stoppers> alerts, in fact, 99 percent of them do not give their name. They're anonymous complaints and that's the way <Crime> <Stoppers> works.

The questioning and testimony relevant to this appeal is that which is underlined above. Detective McElhaney's testimony was clearly unresponsive to the defense counsel's compound question regarding trading sex for prescriptions. While it would have been proper for Detective McElhaney to testify that she had received information or was acting on a tip, it was not necessary or her to relay to the jury that ≤Crime≥ ≤Stoppers had received numerous alerts about the Defendant.

Officers can testify regarding information or was acting on tip, but not testify as to numerous alerts.

COLE v. STATE, 745 So.2d 428 (Fla.App. 3 Dist. 1999)

The defendant appeals his conviction for second degree murder and the denial of his motion for a new trial. Because there is sufficient, independent evidence to support the defendant's conviction, notwithstanding the post-trial disclosure that one of the state's witnesses was rewarded by "Crimestoppers," we affirm. *See Gonzalez v. State*, 449 So.2d 882, 888 (Fla. 3d DCA 1984) ("No abuse of discretion where the action of the court is supported by competent and substantial evidence."). There was no possibility that error, any, contributed to the conviction. *See State v. DiGuilio*, 491 So.2d 1129, 1135 (Fla. 1986).

No abuse of discretion where the action of the court is supported by competent and substantial evidence

RUNGE v. STATE OF FLORIDA, 701 So.2d 1182 (Fla.App. 2 Dist. 1997)

On December 1, 1995, two police officers received an anonymous crime≥ ≤stoppers' tip that there was a stolen black Toyota truck in the parking lot of an apartment complex. The tipster stated that a man named "Cliff" had been driving the truck. The officers went to the apartment complex and located the stolen truck.

Crime Stoppers received tip regarding stolen vehicle

reasonable expectation of privacy in the discarded items, in accordance with the rationale of *Greenwood, Long*, and *Alexander*, previously discussed.

Affirmed.

Crime Stoppers tip leads police to trash on city right of way

Fourth Amendment and §15 of Kansas Constitution Bill of Rights not violated

No reasonable expectation of privacy when trash placed in bags adjacent to public street for city collection

STATE v. HUMPHERY, 267 Kan. 45 (1999), 978 P.2d 264

Detective Clyde Blood, of the Kansas City, Kansas, Police Department, was the lead detective in the investigation into Sedore's murder. He testified that the day after the murder, an officer involved with the TIPS hot line from the Kansas City Crime≥ ≤Stoppers≥ contacted him and a conference call was set up with Blood and an anonymous female. Blood testified the anonymous caller told him she had a "friend named Sherri Simmons who lives at 617 Troup. She had talked to Ms. Simmons during the afternoon of August 12th, `96, and Ms. Simmons had admitted to her that she had shot and killed a truck driver at 8th and Troup." The defense wanted the TIPS phone call admitted into evidence. Prior to trial, the judge ruled the TIPS call was inadmissible hearsay. Also, during the trial, the court ruled that Blood's direct examination testimony was not such that could allow the TIPS call to be admitted on cross-examination.

Blood also prepared a report regarding the TIPS call. He stated in pertinent part:

> "I was contacted by Officer Kevin Cromwell of the Kansas City ≤Crime≥ ≤Stoppers who set up a conference call with an anonymous black female.... [T]he person told me that she has a friend named Sherri Simmons who lives at 617 Troup. She had talked to Ms. Simmons during the afternoon of August 12th, `96, and Ms. Simmons had admitted to her that she had shot and killed a truck driver at 8th and Troup.

> "Ms. Simmons advised that she had agreed to perform a sexual service for the driver and escorted him to 8th and Troup where she proceeded to rob him. The driver tried to fight, so she shot him. The caller advised that . . . she is to meet with Simmons again and will try to gain additional information. The call was terminated."

Humphery correctly acknowledges that the hot line caller's statements were hearsay within hearsay and, thus, a hearsay exception was necessary for both links in the hearsay chain. K.S.A.60-463 provides:

> "A statement within the scope of an exception to K.S.A. 60-460 shall not be inadmissible on the ground that it includes a statement made by another declarant and is offered to prove the truth of the included statement if such included statement itself meets the requirements of an exception."

Humphery correctly acknowledges that the hot line caller's statements were hearsay within hearsay and, thus, a hearsay exception was necessary for both links in the hearsay chain. K.S.A.60-463 provides:

> "A statement within the scope of an exception to K.S.A. 60-460 shall not be inadmissible on the ground that it includes a statement made by another declarant and is offered to prove the truth of the included statement if such included statement itself meets the requirements of an exception."

The defense asserts the first link in the chain, what Simmons said to the caller, falls under the hearsay exception for "admissions by parties." This exception to the hearsay rule provides that hearsay evidence is inadmissible except "[a]s against a party, a statement by the person who is the party to the action in the person's individual or a representative capacity and, if the latter, who was acting in such representative capacity in making the statement." K.S.A. 1996 Supp. 60-460(g). The defense claims that what Simmons said to the caller was clearly an "admission." This reading of the statute does not support the argument that what Simmons said to the caller was an admission as contemplated under the cited hearsay exception. Simmons is a witness, not a party, in this action. The statute indicates that it applies to admissions *by parties*. Thus, Humphery's argument fails the first link in the hearsay chain.

Humphery argues that the second link, what the caller said to Blood, meets the statutory requirements of K.S.A. 1996 Supp. 60-460(d)(3). This statute provides in pertinent part that a statement shall not be excluded as hearsay if the judge finds the statement was made by a declarant who is unavailable as a witness and "by the declarant at a time when the matter had been recently perceived by the declarant and while the declarant's recollection was clear and was made in good faith prior to the commencement of the action and with no incentive to falsify or to distort."

The caller's statements to Blood do not meet the requirements of K.S.A. 1996 Supp. 60-460(d)(3). The trial judge correctly ruled that the TIPS call was inadmissible hearsay because of the impossibility of testing whether the declarant making the TIPS phone call was reliable, whether the declarant had a clear recollection of events, whether the statements were made in good faith, and whether the statements were made with no incentive to falsify or to distort. In conclusion, under the facts of this case, the trial judge correctly ruled that K.S.A. 1996 Supp. 60-460(d)(3) was not applicable and appropriately excluded the substance of the TIPS call as impermissible hearsay evidence.

TIPS call was inadmissible hearsay because of the impossibility of testing whether the declarant making the TIPS phone call was reliable

STATE v. CLAIBORNE, 262 Kan. 416 (1997), 940 P.2d 27

Wheat testified at the defendant's trial and confirmed the events of the evening. In addition, Sheena and Sara testified to the same events. No one was able to provide a description of the assailants because of their covered faces other than that they were both black males.

The following day, the defendant and Yates arrived at Ward's home and told her to keep quiet about the events of the night before. Nevertheless, she called Crime≥ ≤Stoppers and anonymously reported what she knew. Eventually, she gave a statement to the police.

STATE v. MONCLA, 262 Kan. 58 (1997), 936 P.2d 727

The defendant testified on his own behalf and claimed that others had committed the crime. He presented evidence of Swinney's mounting debts to suggest a motive.

He also attacked the police investigation as inadequate in following up leads on other suspects. The defendant claimed that Robertson, the man who found the body, was involved in the murder and that a man named Danny Long committed the murder. The police had received a Crime≥ ≤Stopper tip on Long. In addition, Robert Wisley, a friend of Long's, testified that Long approached him in a bar and confessed to Swinney's murder, specifying that he used a hammer to do it.

STATE v. VAN WINKLE, 254 Kan. 214 (1993), 864 P.2d 729

There were two versions of the events presented at trial. The State's witness, Rick Crowell, who was on parole for a theft conviction, was approached regarding a marijuana deal. Crowell then called the Crimestoppers phone number and agreed to supply information to the police. Crowell testified he had been working for the Junction City Police Department as a paid confidential informant for about three months. Detective Jackson supervised Crowell. Without giving specific details, Jackson opined that Crowell was a reliable informant.

STATE v. SIDEL, 16 Kan. App. 2d 686 (1992), 827 P.2d 1215

In *State v. Toler,* 246 Kan. 269, 787 P.2d 711 (1990), a police sergeant executed an affidavit for a warrant to search an address for drugs, drug paraphernalia, and various other items evidencing drug dealing. In support of this request, the sergeant listed: (1) a controlled buy of drugs on a certain date at the address by a confidential informant who had provided reliable information to the police department in the past; (2) complaints made by former neighbors at another address approximately 15 months earlier that the residents of the address sought to be searched were dealing in drugs; (3) a call approximately seven months earlier from Department of Corrections personnel that one of the residents was suspected of smuggling drugs to an inmate; and (4) an anonymous Crimestoppers tip that one of the residents was dealing in drugs. 246 Kan. 269, 270. The defendant challenged the affidavit as a source of probable cause for the issuance of the warrant, claiming the reliability and credibility of the confidential informant and of the allegations of drug dealing were not established. 246 Kan. at 271, 274.

In concluding that the affidavit presented probable cause, the *Toler* court emphasized the informant's participation in a controlled drug buy:

"materiality" requirement of a Brady violation has been satisfied. *Kyles v. Whitley*, 514 U.S. 419, 115 S.Ct. 1555, 131 L.Ed.2d 490 (1995); *State v. Marshall*, 94-0461 (La. 9/5/95), 660 So.2d 819.

Considering the above, there is no reasonable probability that the evidence which was allegedly withheld from the defense, even considered collectively, would have changed the outcome of the trial. This assignment is without merit.

No reasonable probability that the evidence which was allegedly withheld from the defense, even considered collectively, would have changed the outcome of the trial

STATE v. LABOSTRIE, 96-2003 (La.App. 4 Cir. 11/19/97); 702 So.2d 1194

This court expounded on the *Hearold* standard in *State v. Lavigne*, 95-0204, p. 4 (La.App. 4th Cir. 5/22/96), 675 So.2d 771, 775, *writ denied*, 96-1738 (La. 1/10/97), 685 So.2d 140. In that case, we found that testimony regarding an informant's tip may violate the accused's constitutional right to confront and cross-examine the witnesses against him. Moreover, in *State v. Guy*, 95-0899 (La.App. 4th Cir. 1/31/96), 669 So.2d 517, 525, *writ denied*, 96-0388 (La. 9/13/96), 679 So.2d 102, we found that the issue of relevancy is intertwined with the hearsay issue. Thus, although information obtained from an informant may be relevant, the danger of allowing hearsay into evidence must be weighed against the level of relevancy. In that case, after conducting this balancing test, this court upheld the trial court's admission of the part of the contents of a Crimestoppers' tip. *Id.* We noted the contents of the tip were hearsay, but because the defendant challenged the reliability of the tipster, the hearsay was admissible. Thus, the hearsay testimony "was not used as a passkey to bring before the jury the substance of out of court information that would otherwise be barred by the hearsay rule." *Guy*, 669 So.2d at 526.

Because the defendant challenged the reliability of the tipster, the hearsay was admissible

Hearsay testimony "was not used as a passkey to bring before the jury the substance of out of court information that would otherwise be barred by the hearsay rule

On June 30, 1996, the trial court ruled that the physical evidence was admissible, but granted defendant's motion to suppress his statement regarding ownership of the marijuana plants. The state filed a writ application with this court, which was granted and docketed for expedited appeal.

Detective Jerome McKenzie testified that in early 1994, ≤Crime≥ ≤Stoppers≥ passed on to the Union Parish Sheriff's Office an anonymous tip regarding a marijuana patch in the Truxno area.[fn1] Det. McKenzie got permission to go onto the property upon which the marijuana was growing from the Riverwood Timber Company.[fn2]

Detective McKenzie's testimony was similar to that given at the preliminary examination. Det. McKenzie noted that in addition to the tip about the marijuana patch, ≤Crime≥ ≤Stoppers≥ had received an unrelated tip that defendant was growing marijuana in the area.

Deputy Curtis Batton testified that ≤Crime≥ ≤Stoppers gave the sheriff's office tips that someone was growing marijuana in the Truxno area; however, defendant wasn't named as a suspect. In fact, the officers had no idea who owned the marijuana patch. Deputy Batton stated that he was not present when defendant was arrested.

We therefore conclude that defendant was not taken into custody for the purposes of *Miranda* until his arrest. Consequentially, the statement made prior to that point is admissible. The trial court erred in concluding to the contrary and in suppressing defendant's statement.

Defendant was not taken into custody for the purposes of *Miranda* until his arrest

Statement made prior to arrest is admissible

Trial court erred in concluding to the contrary and in suppressing defendant's statement

STATE v. HAWKINS, 96-0766 (La. 1/14/97); 688 So.2d 473

Assignment of Error I

In this assignment, the defense claims that the state deliberately withheld material exculpatory evidence in violation of Brady v. Maryland, 373 U.S. 83, 83 S.Ct.

1194 (1963) and its progeny. Defendant argues that the State failed to inform him prior to trial that (1) three months after the crime "photographic lineup" displays were made to Hugh Straub, who picked two "possibles"; (2) tips to police and/or Crimestoppers≥ implicated two suspects other than Hawkins as the perpetrator; (3) a .38 revolver found in Hawkins' possession in an unrelated arrest two weeks after the murder was ballistically compared (with negative results) with the .38 bullet retrieved from the victim's body; and (4) a mugshot of Hawkins was displayed to Karen, Charmaine and Germaine Carter for identification purposes.

Defendant knew of at least one suspect provided to the police through tips, and evidence of two ≤Crimestoppers tips with names was presented to the jury. Failure to provide information relating to other tips would not have produced a different result and thus was not material.

Failure to provide information relating to other tips would not have produced a different result and thus was not material.

STATE v. MITCHELL, 95-552 (La.App. 5 Cir. 7/30/96); 680 So.2d 64

On January 12, 1994, Detectives Weber and Tregre returned to the crime scene to canvas the area and to try to gather more information. Shortly afterwards, Detective Weber received a phone call advising him that Crime≥ ≤Stoppers in New Orleans had received a tip that a man named Dwayne Mitchell was involved in committing the crime. The tip further stated that Mitchell lived in New Orleans and drove a vehicle fitting the description of the one involved in the crime. Based on this information, Detective Weber compiled another six person photo lineup. This time the lineup contained defendant's picture. Upon viewing the lineup, Steib, within seconds, identified defendant as the person who shot Pierce. Based on this identification, the police obtained an arrest warrant for defendant as well as a search warrant for his vehicle and residence. Defendant was subsequently arrested on January 13, 1994.

After a Crime Stoppers tip, a photo line-up was conducted

Based on identification after photo line-up, arrest warrant was obtained

STATE v. GREEN, 93-1432 (La.App. 4 Cir. 4/17/96); 673 So.2d 262

Detective Craig Rodrigue testified that he participated in Green's arrest. In response to Crime≥ ≤Stoppers information he found Green hiding in the bedroom

dangerous propensity of this defendant as demonstrated by his actions in these offenses, the consecutive sentences imposed by the trial judge are not excessive.

Trial court properly denied the motion to suppress the identifications

Defendant was not prejudiced by the trial court's denial of the motion to change venue

Consecutive sentences imposed by the trial judge are not excessive

STATE v. GUY, 95-0899 (La.App. 4 Cir. 1/31/96); 669 So.2d 517

Reginald Hawkins, the only eyewitness to the shooting, testified that he was on his porch at 1448 Milton Street on February 7, 1994, at approximately 10:30 p.m. when he heard loud music and saw a person he knew as "T." walking across the street carrying a radio. When a red car honked at "T.", Hawkins saw him switch the radio from his right to left hand, pull out a gun from his right side, and shoot at the rear of the car three times in close succession. Hawkins testified that after the car ran into another car, "T." approached within eight to ten feet of him and told him to "Take [his] punk ass inside and don't say nothing." Hawkins testified that he went inside and did not speak to the police until he was picked up on a municipal attachment on April 12, 1994, because he was afraid of the shooter. Hawkins testified that he identified "T." in a photographic line-up. Hawkins testified that he did not learn there was a Crime≥ ≤Stoppers≥ reward until after he made his identification, and he testified that he was not promised anything regarding his municipal attachment in exchange for the identification. Hawkins testified that he has used the names Reginald Wilson and George Clark, that he was serving time for battery, and had pleaded guilty to tampering and was sentenced to sixty days with credit for time served. Hawkins identified Guy in court.

Sergeant Chris Peleteri, ≤Crime≥ ≤Stoppers≥ coordinator for the New Orleans Police Department, testified that Hawkins was paid $500 after Guy was indicted and that Hawkins was eligible to receive $500 more after testifying at trial. Sergeant Peleteri testified that he opted to divide the fee to provide an incentive for Hawkins to appear to testify.

Detective Jimmy Stewart of the New Orleans Police Department Homicide Division testified that on April 12, 1994, he interviewed Hawkins who had been picked up by Officer Chad Stokes for a municipal violation. Detective Stewart testified that he did not offer Hawkins any ≤Crime≥ ≤Stoppers≥ money before

taking a statement or make any promises regarding his municipal attachment. Detective Stewart testified that Hawkins identified Guy from a photographic line-up after which Stewart informed him that there was ≤Crime≥ ≤Stoppers≥ money available in this case. Detective Stewart testified that he obtained a warrant for Guy's arrest.

Appellant also contends that the State's case is based completely upon the testimony of a convicted felon who was paid by ≤Crime≥ ≤Stoppers≥ for his testimony. Credibility determination is within the sound discretion of the trier of fact and will not be disturbed unless clearly contrary to the evidence. *State v. Vessell,* 450 So.2d 938, 943 (La. 1984); *State v. Jones,* 537 So.2d 1244, 1249 (La.App. 4th Cir. 1989). The jury was aware of Hawkins's prior convictions, his incarceration at the time of trial, and that he had been paid $500 and would be paid an additional $500 by ≤Crime≥ ≤Stoppers≥. Hawkins testified that he was not aware of the reward before he gave his statement to the police and that he did not report the incident earlier because he was intimidated by the defendant.

In his fourth assignment of error, appellant contends that hearsay evidence was introduced at trial. Specifically, he objects to the testimony of Sergeant Peleteri that ≤Crime≥ ≤Stoppers≥ had received information that Terence Kennedy had committed the murder. Sergeant Peleteri testified as follows on redirect:

> BY MS. ANDREWS:
>
> Q. Officer Peleteri, are there occasions when the $1,000 is split by more than one witness?
>
> A. Yeah, we do that a lot.
>
> Q. And are there occasions when people give ≤Crime≥ ≤Stoppers≥ tips and yet they are not paid ≤Crime≥ ≤Stoppers≥ money?
>
> A. There are some people that aren't interest in the money. There is a lot of cases that way, too.
>
> Q. Are there requirements that a person be an eyewitness to a crime to receive ≤Crime≥ ≤Stoppers≥ money?
>
> A. No.

Q. And if a person gives a tip but is not an eyewitness — let me rephrase that. Just because money was paid to Reginald Hawkins in this case doesn't mean that there weren't other <Crime> <Stoppers> tips.

MS. WHITE:

Objection, your Honor, first as leading the witness, and second, it's irrelevant.

THE COURT:

I would sustain that.

BY MS. ANDREWS:

Q. If you are contacted or receive information from more than one person, whose determination is it whether one person gets the money or it's split?

A. Well, the final determination —

MS. WHITE:

Objection, your Honor. I don't think that's even relevant in this case.

MS. ANDREWS:

Miss White asked a question which is misleading.

THE COURT:

I think you're asking him to speculate. I think that's the nature of your question. I would sustain her objection.

BY MS. ANDREWS:

Q. Did you receive information from more than one person in this case?

MS. WHITE:

Objection, your Honor.

THE COURT:

As to that general question, yes or no, I'll let him answer that. I'd overrule your objection.

BY MS. ANDREWS:

Q. Did you receive information from more than one person in this case?

A. Yes.

Q. How many people?

MS. WHITE:

Objection, your Honor. What's the probative value?

THE COURT:

I really think you ought to limit that.

BY MS. ANDREWS:

Q. And it was your decision to recommend to Mr. Hawkins for the $500 that he has received?

A. For that money he has received and any other money.

Q. Thank you.

On recross, Officer Peleteri testified as follows:

BY MS. WHITE:

Q. Officer Peleteri, you were given more than one name in this case too, weren't you?

A. Yes, ma'am.

Q. Okay. And you're not saving that other $500 for another witness, are you? It's earmarked for Reginald Hawkins, isn't it?

A. Yes, ma'am.

On redirect, Officer Peleteri then testified:

BY MS. ANDREWS:

Q. You were not given any tips which did not include the name Terence Guy? Each tip you received did include the name Terence Guy, did it not?

A. No. Can I explain it?

THE COURT:

Yes, sir, you may.

THE WITNESS:

The tips we received — there was two names, and it was the name that the defendant goes by, another name.

BY MS. ANDREWS:

Q. Which name is that?

A. Kennedy.

Q. Thank you.

Appellant contends that through this testimony the State impermissibly bolstered Hawkins's identification of Guy as the perpetrator.

In the instant case, the evidence of each crime was compartmentalized and not confused. The primary witnesses in the Litton robbery and kidnapping were Litton, Mayes and Spinks. The primary witnesses in the Williams kidnapping, robbery and rape were Williams, Bill Woods, Dr. Fontenot and Dr. Giles. At trial, the law enforcement officers involved informed the jury of their investigations and findings in each case. Following detailed instructions from the trial court, the jury was given five verdict forms and it later returned five separate verdicts. In short, the record is devoid of any evidence that the defendant was prejudiced by the joinder of the offenses. A defendant in any case bears a heavy burden when alleging prejudicial joinder of offenses as grounds for a motion to sever. Factual rather than conclusory allegations are required. *State v. Davis*, 92-1623 (La. 05/23/94), 637 So.2d 1012. The trial court did not abuse its great discretion by refusing to sever the offenses.

Trial court did not abuse its great discretion by refusing to sever the offenses

STATE v. SPEARS, 94-0327 (La.App. 4 Cir. 12/15/94); 647 So.2d 1313

BY THE COURT:

All right, Officer, answer the question.

CROSS-EXAMINATION RESUMED:

A. The basis for me picking the picture of the defendant, Algie Spears, I received an anonymous phone call from the crime≥ ≤stoppers≥ saying they personally knew Algie Spears was the perpetrator of an armed robbery at the Tenneco station which occurred on December 30th, that's why your client's picture was in the photo lineup.

Q. An anonymous phone call?

A. Yes, sir, that's correct.

Q. Now, you say that you were trying to find a name of this person you already knew the name of a person who was alleged to be the perpetrator of the crime?

A. No, sir, I did not.

Q. Well, how did the ≤crime≥ ≤stoppers≥ identify this gentleman as the person who committed the crime?

A. You'd have to ask the person that called that in, I don't know.

Q. Well, I'm confused. You're saying as a result of an anonymous phone call from the ≤crime≥ ≤stoppers, you felt like that Algie Spears was the person that committed a robbery?

A. I felt like there was a possibility that Algie Spears was the person that committed the robbery so I put him in the photo line-up.

Q. But whoever called on the phone, how did they identify him as the possible person, did they say Algie Spears?

A. Yes, sir, they did. They stated that Algie Spears was the perpetrator and was currently locked down in Parish Prison.

Q. To the best of your knowledge did the victim of this crime get a look at the face of the person while he was holding the gun on her?

A. To the best of my knowledge did the victim get a look at the face of the person while he was holding the gun on her?

Q. While the actual robbery was taking place.

A. No, sir.

In *State v. Francosi*, 511 So.2d 1181, 1182 (La.App. 4th Cir. 1987), this court defined hearsay as "testimony in court, or written evidence, of a statement made out of court, the statement being offered as an assertion to show the truth of the matter asserted therein, and thus, resting for its value upon the credibility of the out of court asserter." As per R.S. 15:434, as it existed at the time of trial, hearsay evidence was generally inadmissible at trial. In the instant case, the officer's account of the crimestoppers' telephone conversation was not admitted to prove that the defendant was the perpetrator. The content of the conversation was introduced to simply show why the police officer placed the defendant's

MISSOURI

STATE v. FORD, 21 S.W.3d 31 (Mo.App.E.D. 2000)

[13] The case at hand is similar to one recently decided by the Western District in Williams, 9 S.W.3d at 3. In Williams, the police received an anonymous CrimeStoppers≥ tip that the defendant was selling cocaine from his apartment, he just received a large shipment of cocaine, drove an older-model green Pontiac, and lived with his girlfriend "Kay." Id. at 7. The police investigated the tip, learning the apartment was registered to a Kaylicia Vanee Patrick and observed a green Pontiac parked at the apartment. Id. The officer also learned that the defendant had been previously arrested for selling cocaine from the same apartment and possession of cocaine. Id. Based on this information, the court found probable cause to issue and issued a search warrant for the apartment. Id. at 8.

[14] On appeal, the defendant claimed the officer's affidavit was deficient because it was based on hearsay (the ≤CrimeStoppers anonymous tip), which was uncorroborated or provided by a reliable informant. Id. at 14. The Western District found the hearsay statements in the anonymous tip had been corroborated by independent police observations, which created a substantial basis for crediting the hearsay contained in the affidavit. Id. at 16. Here, as in Williams, independent police observations corroborated the information provided by Shantel Cline.

Probable cause warrants issued after Crimestoppers tip

Corroboration of Crimestoppers tip not hearsay

BUCKNER v. STATE, 35 S.W.3d 417 (Mo.App.W.D. 2000)

On September 22, 1997, at 2:33 a.m. the Sedalia police department received an anonymous "Crime≥ ≤Stoppers≥" call indicating that a man was selling drugs in the area of Pettis and Osage Streets. Officer Westmoreland responded to the location. While Officer Westmoreland was en route, the same caller informed the dispatcher that the person selling the drugs got into a "70's model vehicle" with another person, and was leaving the area. Almost immediately thereafter, as Officer Westmoreland was approaching the vicinity, he saw a "70's model Chevrolet Impala" occupied by two men pass him and turn onto another street. He turned and followed a short distance, and then stopped the car. There was no other

Looking at this case in context, the jury assessed punishment and a fine, with all to be probated. A pre-sentence investigation was ordered and offered into evidence at the sentencing hearing. Appellant did not object to anything that was in the pre-sentence investigation report. Due to the deadly weapon allegation in the indictment, the defendant could not have gone to the judge for probation. It was necessary for him to argue for probation to a jury, and his argument was successful. Even if, in their totality, the terms of probation could be considered unreasonable, they are still much preferred to time in the penitentiary. We find the trial court, based upon the above *Lacy* factors, did not abuse its discretion. Point of error number two is overruled.

The trial court, based upon the above *Lacy* factors, did not abuse its discretion.

CRAWFORD v. STATE, 934 S.W.2d 744 (Tex.App.-Hous. (1 Dist.) 1996), 934 S.W.2d 744

Appellant, Judy Lynn Crawford, was convicted of capital murder and sentenced to life imprisonment. This Court affirmed the conviction in *Crawford v. State,* 863 S.W.2d 152 (Tex.App. — Houston [1st Dist.] 1993) (Cohen, J., concurring and dissenting).[fn1] Echoing Justice Cohen's dissenting opinion, the Court of Criminal Appeals reversed this Court's decision. *Crawford v. State,* 892 S.W.2d 1, 3-4 (Tex.Crim.App. 1994) (holding trial court's denial of appellant's proper request for production of Crime≥ ≤Stoppers≥ report amounted to absolute bar to potential *Brady*[fn2] material in violation of Fourteenth Amendment). On remand, we abated the appeal and ordered the trial court to hold a hearing, as provided in *Thomas v. State,* 837 S.W.2d 106, 114 (Tex.Crim.App. 1992),[fn3] to determine the availability and materiality of the ≤Crime≥ ≤Stoppers≥ report. The trial court conducted the hearing and found the ≤Crime≥ ≤Stoppers≥ report is unavailable, having been destroyed by a computer virus in 1991. The only remaining issue is the proper remedy for the *Thomas* error in this case.

The Error

The Due Process Clause of the Fourteenth Amendment requires the State to disclose any information in its possession which is material to either guilt or punishment. *See Brady,* 373 U.S. at 87, 83 S.Ct. at 1196-97. Impeachment evidence is included within this rule. *United States v. Bagley,* 473 U.S. 667, 676, 105 S.Ct. 3375, 3380, 87 L.Ed.2d 481 (1985); *Thomas,* 837 S.W.2d at 112. Appellant had a right to an *in camera* inspection of Officer Rick Wiatt's ≤Crime≥

≤Stoppers≥ report to determine whether it contained exculpatory, or *Brady,* material. *Crawford,* 892 S.W.2d at 3; *see also Thomas,* 837 S.W.2d at 114. The trial court refused appellant's request for production of Wiatt's ≤crime≥ ≤stoppers≥ report.

The Remedy

Appellant requests a new trial as remedy for the *Thomas* error. She argues the failure of the trial court to order an *in camera* inspection of the ≤Crime≥ ≤Stoppers≥ report is *per se* reversible error. In the alternative, she argues the failure to order an *in camera* inspection is reversible error under *Harris v. State,* 790 S.W.2d 568 (Tex.Crim.App. 1989). The State initially argued that any error was harmless because appellant was attempting to impeach Officer Wiatt on a collateral matter. Now the State urges application of a harmless error analysis under *Shelby v. State,* 819 S.W.2d 544 (Tex.Crim.App. 1991).

Under a harmless error analysis, this Court must reverse appellant's conviction if it is not satisfied beyond a reasonable doubt that the error did not contribute to the conviction or to the punishment. *See* TEX.R.APP.P. 81(b)(2). In this case, we need only consider whether the error contributes to appellant's conviction, because the State chose not to seek the death penalty. When the State does not seek the death penalty, a defendant's capital murder conviction automatically results in a life prison term. TEX.PENAL CODE ANN. § 12.31 Penal(b) (Vernon 1994). Punishment cannot be affected, because the trial court has no discretion.

In its motion for rehearing, the State urges that the unavailability of the Crimestopper≥'s Report is analogous to the "failure to preserve evidence" cases which require a showing of bad faith for a finding of denial of due process. The State claims that the testimony at the hearing on remand established that the report had been unavailable from the latter part of 1991 due to a virus. Thus, when the case was tried in December 1991, the trial court would have been unable to examine the report to determine if it contained exculpatory material.

We agree with the State that the rule in *Shelby* is a more appropriate standard for our analysis because it deals with the improper *exclusion* of evidence, not the improper *admission* of evidence, as in *Harris. See Young v. State,* 891 S.W.2d 945, 948 (Tex.Crim.App. 1994). Under *Shelby,* when conducting a harmless error analysis, this Court must first assume the damaging potential of the ≤Crime≥ ≤Stoppers≥ report is fully realized. 819 S.W.2d at 550. While appellant's request for production arose in an attempt to determine whether Officer Wiatt had made a

particular entry in the ≤Crime≥ ≤Stoppers≥ report, the full extent of the damaging potential far exceeds the absence of that entry. Appellant was not only entitled to disclosure of the ≤Crime≥ ≤Stoppers≥ report to check for such an entry, but also for any *Brady* material. *Brady* material includes both exculpatory and impeachment evidence. *Bagley,* 473 U.S. at 676, 105 S.Ct. at 3380; *Thomas,* 837 S.W.2d at 112. The trial court's failure to order an *in camera* inspection infringed on appellant's right to the disclosure of information under the rule in *Brady. Crawford,* 892 S.W.2d at 3. The scope of the *in camera* inspection contemplated by the *Thomas* holding includes all *Brady* material. *See Thomas,* 837 S.W.2d at 114. Here, there is no report to inspect and, thus, no factual findings regarding materiality by the trial court.

Through no fault of appellant, the record is insufficient to evaluate the full damaging potential of the report. Because it is impossible to satisfy this first part of the *Shelby* analysis, we cannot conclude beyond a reasonable doubt that the *Thomas* error did not contribute to appellant's conviction. We do not reach appellant's argument based on *per se* reversible error because we are required to reverse appellant's conviction under a harmless error analysis.

The State relies on the following question and answer from the hearing on remand:

> Q: And you wouldn't have been able to get to it [the ≤Crimestopper≥'s Report] in late 1991 could you?
>
> A: No, sir.

Admittedly, taken out of context, this excerpt supports the State's position that the ≤Crimestopper≥'s Report was unavailable in December of 1991 when appellant's trial took place. However, other portions of the statement of facts demonstrate that the phrase "late 1991" could not be pinned down:

> Q: And you said late '91, is there any method by which you could give us a more exact time period?
>
> A: I guess I don't know — I don't know if the Computer Warehouse kept any files on when I was there. Since they didn't charge me anything for it I don't know if they keep any files on it, either.

Q: Would you have known whether it would have been before Thanksgiving? Would you remember that?

A: It would just be speculating, sir.

We observe that the trial court remarked that the Report probably wasn't available at the time (of trial when) the witness was on the stand, while admitting uncertainty about the matter. This is consistent with the trial court's finding that the Report "was destroyed during the pendency of this matter either by the virus or by the purging which was necessary because of the virus." It is also consistent with the trial court's conclusion the Report is no longer available and "was destroyed either by a virus in the latter part of 1991 or by a purging of the information in May, 1992 which was necessary action due to the virus."

The issue in this case is a close one; its resolution ultimately turns on who bears the burden. We have previously concluded the, so the burden is trial court erred in denying access to the ≤Crimestopper's Report effectively on the State to show harmlessness beyond a reasonable doubt. TEX.R.APP.P. 81(b)(2). Because the trial court could not conclude with certainty, based on the evidence presented, that the Report was unavailable at the time of trial in December 1991, the State did not meet its burden of showing the error was harmless beyond a reasonable doubt.

Accordingly, we overrule the State's motion for rehearing.

[fn3] *Thomas* was decided after the trial in this case. It held that the statutory confidentiality safeguards of ≤Crime≥ ≤Stoppers reports must yield to a defendant's due process rights under *Brady*. Thomas, *837 S.W.2d at 113.*

Trial court erred in denying access to the ≤Crimestopper's Report

State did not meet its burden of showing the error was harmless beyond a reasonable doubt

PARISH v. STATE, 939 S.W.2d 201 (Tex.App.-Austin 1997), 939 S.W.2d 201

Parish was arrested pursuant to a search and arrest warrant obtained after an unknown citizen called to inform Crime≥ ≤Stoppers≥ that Freddie Parish, also known as Freddie Holmes, had "numerous cookies" of crack cocaine, which he was selling from room 235 of the Ramada Inn on North Interstate Highway 35; that Parish was a large, dark-complexioned black male over six feet tall,

CRIME STOPPERS CASE LAW

CANADIAN VERSION

[SEE ENCLOSED CD, PLEASE]

Jones v. Clay Broadcasting et al, No. 34, 970, Circuit Court, First District, Hinds County, Mississippi

Jessie Lee Jones filed this libel suit on June 18, 1987, against a Jackson, Mississippi, television station and its employees, seeking $1,300,000 in damages. Jones did not sue Crime Stoppers, but alleged that he was defamed in the April 19, 1987, Sunday evening broadcast of the "Crime Stoppers Report" on WAPT-TV, Channel 16. The defense argued that the report was aired as a "public service" at the request of the City of Jackson Police Department based solely on information provided by the police. Defense arguments also included that the telecast was (1) in good faith, (2) due to an honest mistake of the facts; (3) that there were reasonable grounds for believing the statements were true; and (4) that reasonable due care was exercised in the telecast. A "full and fair correction, apology and retraction under like conditions as the original telecast" were also made. Finally, the tv station claimed that it was a complete and accurate report of an official action of the police dealing with a matter of public concern and is therefore "privileged."

On November 17, 1987, the media was dismissed from the suit when the trial judge granted the defendants' "Motion for Summary Judgment." The judge, citing Wilson v. Capital City Press, 315 So.2d 393 (La.App. 1975), and Lavin v. New York News, Inc., 757 F.2d 1416 (3rd Cir. 1985), said that the news media was entitled to rely upon the official reports and photographs supplied by the police department. Nor was there anything wrong with the photograph of Jones being rebroadcast during the apology and retraction.

On December 30, 1988, the police officers were also dismissed as defendants because the court ruled that the one-year statute of limitation had expired. The court refused, however, to drop Crime Stoppers of Jackson, Inc., because the police may have been acting as the board's agent. The case was soon settled with a nominal payment from the Crime Stoppers board.

LIBEL SUIT AGAINST TELEVISION STATION AND CRIME STOPPERS
POLICE AS AGENTS OF CRIME STOPPERS, INC.

Office of the Attorney General of the State of Mississippi
(October 17, 1985)

Mississippi Attorney General Edwin Lloyd Pittman's opinion approved the legality of the DeSoto County Sheriff's Department hiring a full-time staff member whose main duty would be to coordinate the activities of the Crime Stoppers unit and act as liaison between the unit and the Sheriff's Department. The staff member would be paid by DeSoto County and work under the sheriff.

The opinion had been requested by State Representative John Grisham, Jr., of Southhaven. Representative Grisham served on the original board of the local Crime Stoppers program.

COUNTY SHERIFF MAY LAWFULLY BUDGET FUNDS FOR A FULL-TIME STAFF MEMBER TO SERVE AS COORDINATOR OF CRIME STOPPERS

MISSISSIPPI

CONLEY v. STATE, 790 So.2d 773 (Miss. 2001)

¶ 35. Conley asserts that the circuit court erred in allowing the prosecution to ask the preceding questions and thereby "testify" before the jury using a "silent≥ ≤witness≥." He argues that such actions violate the Confrontation Clause since the prosecution cannot be cross-examined by the defendant about the "≤silent≥ ≤witness≥'" testimony.

¶ 37. Conley cites *Balfour v. State*, 598 So.2d 731, 753 (Miss. 1992), in support of his argument. In *Balfour*, the defense called a co-conspirator, Payne, who testified as to his name and age and then invoked his Fifth Amendment right in response to all other questions. *Id.* at 748. The prosecution cross-examined Payne with a series of questions about a confession he had given to the police to which he again responded by invoking his Fifth Amendment rights. *Id.* at 751. This Court stated:

> [o]n direct-examination, Payne's testimony yielded nothing, and the prosecutor is precluded from picking up the gauntlet and testifying for Payne. For when the prosecutor, through the use of leading questions, parades before the jury the `testimony' of the ≤silent≥ ≤witness≥, such action violates the Confrontation Clause since the prosecutor cannot take the stand to be cross-examined by the defendant about the ≤silent≥ ≤witness≥'s `testimony.'

Id. at 753. We explained that "when a witness invokes the Fifth Amendment, his silence does not constitute a denial which may be impeached. Therefore, Payne could not be impeached by the State for the confession statement which he gave." *Id.* at 751. However, if Payne had testified and related a different version of events from his statement, then the prosecution could have impeached Payne. *Id.*

¶ 39. The case at hand is easily distinguished from *Balfour*, cited by Conley. In *Balfour*, the witness had invoked his Fifth Amendment rights to every question except his name and age. We held that the prosecutor could not testify for a "≤silent≥ ≤witness≥." However, in this case, Teronda was anything but a ≤silent≥ ≤witness. At this point in the trial Teronda had given numerous inconsistent statements incriminating both herself and Conley. Conley even refers to Teronda as a co-defendant at various points throughout his brief. Before Teronda's re-direct, she had testified for nearly a day and had been impeached on numerous occasions

by both parties. At no time prior had she invoked the Fifth Amendment. Under both *Balfour* and *Hughes*, Teronda falls within the class of witnesses where impeachment by leading questions would be proper. The State had a right to try to pin Teronda down on the many inconsistent statements that she had given. For the above-mentioned reasons, we find no abuse of discretion by the trial court on this issue.

When the prosecutor, through the use of leading questions, parades before the jury the 'testimony' of the ≤silent≥ ≤witness≥, such action violates the Confrontation Clause since the prosecutor cannot take the stand to be cross-examined

State has right to impeach silent witness through leading questions when silent witness gives inconsistent statements

BURNS v. STATE, 729 So.2d 203 (Miss. 1998)

¶ 9. Phillip Hale and Burns were not arrested until August of 1995 concerning this crime. The Tupelo Police Department arrested them pursuant to an investigation that ensued after two anonymous phone calls were received by the Crime≥ ≤Stoppers.

Calls to Crime Stoppers leads to arrest

ONE (1) CHARTER ARMS v. STATE, 721 So.2d 620 (Miss. 1998); ONE (1) CHARTER ARMS, BULLDOG 44 SPECIAL, SERIAL # 794774; One (1) 1984 Chevrolet Corvette, Vin # 1G1AY0786E5126312; and Kevin Williams v. STATE of Mississippi, ex rel., Mike MOORE, Attorney General; The City of Meridian, Mississippi; Lauderdale County, Mississippi; and King Loan Services, Inc., No. 94-CA-00091-SCT.

2. On September 16, 1992, a crime≥ ≤stopper informant contacted Agent Joel Walters ("Walters"), of the Meridian/Lauderdale County Narcotics Task Force, that a man in a black Corvette, license plate # 1EPG875 Lauderdale County, was approached by a known distributor of crack cocaine in an area of town known as the Red Line district. The informant told Walters that a drug transaction had taken place between the known distributor and the man in the black Corvette. A check of the license plate showed that the Corvette was owned by the claimant here, Kevin Williams.

Tip leads police to arrest

HULL v. STATE, 687 So.2d 708 (Miss. 1996)

Lanier, 533 So.2d at 487; *see also Balfour v. State,* 598 So.2d 731, 753 (Miss. 1992) (holding that defendant's confrontation clause rights were violated by the prosecutor's "parade" of "testimony" of a silent≥ ≤witness); *Bobb v. Modern Products, Inc.,* 648 F.2d 1051, 1055 (5th Cir. 1981) ("cross-examination which attempts to impeach by slipping hearsay evidence into trial shall not be permitted").

Cross-examination which attempts to impeach by slipping hearsay evidence into trial shall not be permitted

TUCKER v. STATE, 647 So.2d 699 (Miss. 1994)

Garvin Leonard Tucker entered an Exxon Service Station on May 2, 1992 and robbed and assaulted the employee, Methel Johnson. Tucker took $35.00 dollars from the cash register. Tucker was identified from the store's surveillance video camera by the Crime≥ ≤Stopper's program. Johnson later identified Tucker from a photographic lineup. Tucker was read his rights and signed a statement of confession to the crime.

Surveillance video by Crime Stoppers program leads to arrest

BALFOUR v. STATE, 598 So.2d 731 (Miss. 1992)

To like effect, the D.A.'s questioning of Payne concerning Payne's statement was error. As in *Hansen,* it was Balfour who called Payne to the stand. On direct-examination, Payne's testimony yielded nothing; and, the prosecutor is precluded from picking up the gauntlet and testifying for Payne. *See Douglas v. Alabama,* 380 U.S. at 419, 85 S.Ct. at 1077, 13 L.Ed.2d at 937-38. For when the prosecutor, through the use of leading questions, parades before the jury the "testimony" of the silent≥ ≤witness≥, such action violates the Confrontation Clause since the prosecutor cannot take the stand to be cross-examined by the defendant about the ≤silent≥ ≤witnesses' "testimony".

For when the prosecutor, through the use of leading questions, parades before the jury the "testimony" of the silent≥ ≤witness≥, such action violates the Confrontation Clause since the prosecutor cannot take the stand to be cross-examined by the defendant about the ≤silent≥ ≤witnesses' "testimony"

Mississippi Reports

SESSOM v. STATE, 2004-KA-02511-COA (Miss.App. 5-16-2006)

EDWARD SESSOM A/K/A WAYNE SESSOM, APPELLANT, v. STATE OF MISSISSIPPI, APPELLEE.

No. 2004-KA-02511-COA.

Court of Appeals of Mississippi.

May 16, 2006.

Petition for Rehearing Filed

May 22, 2006.

COURT FROM WHICH APPEALED: DESOTO COUNTY CIRCUIT COURT, TRIAL JUDGE: HON. ROBERT P. CHAMBERLIN, DATE OF JUDGMENT: 12/16/2004

DISPOSITION: AFFIRMED

ATTORNEYS FOR APPELLANT: JACK R. JONES

ATTORNEYS FOR APPELLEE: OFFICE OF ATTORNEY GENERAL BY: JACOB RAY

DISTRICT ATTORNEY: JOHN CHAMPION

EN BANC

ROBERTS, J., FOR THE COURT:

¶ 1. A DeSoto County jury convicted Edward Sessom of felony escape. The court sentenced him to serve five years in the custody of the Mississippi Department of Corrections. Aggrieved, Sessom appeals and asserts that the trial court erred (1) in denying his motion for a directed verdict, motion for a judgment notwithstanding the verdict, and motion for a new trial, and (2) in allowing the prosecution to impeach a defense witness with proof of a prior conviction. Finding no error, we affirm.

FACTS

¶ 2. On May 13, 2004, Sessom was scheduled to stand trial for conspiring to bring marijuana into the DeSoto County Jail. The trial was set to take place before Circuit Judge George Ready. However, Sessom failed to appear at the appointed time, so Judge Ready dismissed the attorneys and the jury. Later, as Judge Ready was presiding over other court matters, a court employee informed him that Sessom had arrived at the courthouse.

¶ 3. Judge Ready, accompanied by the bailiff, conversed with Sessom about his failure to appear for trial. Judge Ready explained to Sessom that his bond had been revoked as a result of his failure to appear earlier that day. Judge Ready then ordered

the bailiff to take Sessom into custody to secure his presence at the next trial date. The bailiff took Sessom into custody and escorted him to a holding room within the courthouse. Thereafter, Sessom exited the holding room to converse with his attorney. The bailiff followed Sessom out of the holding room, maintained a hold of him and reminded him that he was still under arrest. As the bailiff attempted to handcuff Sessom, Sessom broke free and fled from the courthouse.

¶ 4. An arrest warrant was issued for Sessom, and shortly thereafter, Memphis police officers, acting on a Crime Stoppers's tip, discovered Sessom hiding in an abandoned house in Memphis. The officers took Sessom into custody based on the Mississippi warrant. Sessom was subsequently indicted, tried and convicted of felony escape under Mississippi Code Annotated section **97-9-49**(1) (Rev. 2000).

ANALYSIS AND DISCUSSION OF THE ISSUES

1. Post-trial Motions

¶ 5. Sessom contends that the trial court erred in overruling his motions for directed verdict, judgment notwithstanding the verdict, and motion for a new trial. We address each in turn.

¶ 6. A motion for a directed verdict or judgment notwithstanding the verdict both challenges the legal sufficiency of the evidence presented at trial. The Mississippi Supreme Court has stated:

> that in considering whether the evidence is sufficient to sustain a conviction in the face of a motion for directed verdict or for judgment notwithstanding the verdict, the critical inquiry is whether the evidence shows "beyond a reasonable doubt that the accused committed the act charged, and that he did so under such circumstances that every element of the offense existed; and where the evidence fails to meet this test it is insufficient to support a conviction." However, this inquiry does not require a court to "ask itself whether *it* believes that the evidence at the trial established guilt beyond a reasonable doubt." Instead, the relevant question is whether, after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt.

Dilworth v. State, **909 So.2d 731**, **736** (¶ 17) (Miss. 2005) (quoting *Jackson v. Virginia*, **443 U.S. 307**, **315** (1979)). Conversely, a motion for a new trial challenges the weight of the evidence. "The evidence should be weighed in the light most favorable to the verdict." *Id.* at (¶ 21). We will only disturb a verdict when it is "so contrary to the overwhelming weight of the evidence that to allow it to stand would sanction an unconscionable injustice." *Id.* (citing *Bush v. State*, **895 So. 2d 836**, **844** (¶ 18) (Miss. 2005)).

¶ 7. Sessom argues that the proof fails to support his

conviction for felony escape.[fn1] He contends that he was arrested for contempt of court, that is, failing to appear on time for trial on the conspiracy charge,[fn2] which is a misdemeanor offense. Therefore, Sessom urges us to reverse his conviction and remand for proper sentencing under the dictates of Mississippi Code Annotated Section 97-9-49(1), which states:

> Whoever escapes or attempts by force or violence to escape from any jail in which he is confined, *or from any custody under or by virtue of any process issued under the laws of the State of Mississippi by any court or judge, or from the custody of a sheriff or other peace officer pursuant to lawful arrest,* shall, upon conviction, *if the confinement or custody is by virtue of an arrest on a charge of felony,* or conviction of a felony, be punished by imprisonment in the penitentiary not exceeding five (5) years to commence at the expiration of his former sentence, or, if the confinement or custody is by virtue of an arrest of or charge for or conviction of a misdemeanor, be punished by imprisonment in the county jail not exceeding one (1) year to commence at the expiration of the sentence which the court has imposed or which may be imposed for the crime for which he is charged.

(emphasis added).

¶ 8. It is important to understand Sessom's status on May 13, 2004. On that date, Sessom was supposed to appear for his trial on three counts relating to an alleged attempt to smuggle drugs into the Desoto County Jail. Specifically, count one charged Sessom with the felony of conspiracy to smuggle drugs into the jail in violation of Section 97-1-1(a) of the Mississippi Code. Count two charged Sessom with the felony of bringing controlled substances into the jail in violation of Section 47-5-198 of the Mississippi Code. Count three charged Sessom with an attempt to possess illegal controlled substances in the Desoto County Jail. All three counts are felony crimes.

¶ 9. The trial exhibits included the general affidavit and warrant signed by Justice Court Judge Ken Adams. Those documents charged Sessom with the conspiracy to bring drugs into a correctional facility and included a scheduling order that indicated that a $5,000 bond had been set. Sessom made bond on the felony charge. By statute, the conditions of Sessom's bond required his appearance at the next regularly scheduled grand jury to await action and remain day to day and term to term until discharged according to law. *See* Miss. Code Ann. § 99-5-1 (Rev. 2000).

¶ 10. On May 13, 2004, the circuit court judge, the district attorney, Sessom's defense counsel, the jury pool, the court reporter, witnesses, and everyone else was present and ready to afford Sessom his constitutional right to a fair and impartial trial – everyone except Sessom. He failed to appear. As such, he violated the condition of his felony bond. The circuit court judge had no option but to dismiss the jurors, revoke Sessom's bond, issue a bench warrant for Sessom's arrest, and direct the

circuit clerk to enter a judgment nisi on Sessom's bondsman. *See* Miss. Code Ann. § **99-5-25**(1)(a) (Rev. 2000).

¶ 11. On May 13, 2004, *Sandoval v. State*, **631 So.2d 159** (Miss. 1994) was the law in Mississippi. Pursuant to *Sandoval*, the circuit court had no authority to try Sessom in his absence and the trial judge did not have the option to proceed with trial. *Id.* at 164. Additionally, the trial judge followed the requirements of Section **99-5-25** of the Mississippi Code. According to that Section:

> If a defendant . . . fails to appear for any proceeding as ordered by the court, then the court shall order the bail forfeited and a bench warrant issued at the time of nonappearance. The purpose of bail is to guarantee appearance and bail shall not be forfeited for any other reason. Upon declaration of such forfeiture, the court shall issue a judgment nisi. The clerk of the court shall notify the surety of the forfeiture by writ of scire facias within five (5) working days of the entry of such order of judgment nisi either by personal service or by certified mail.

Miss. Code Ann. § **99-5-25**(1)(a).

The Legislature did not amend Section **99-17-9** of the Mississippi Code until July 1, 2005. That amendment effectively overruled *Sandoval* as it relates to trial of a felony offender in his absence.

¶ 12. So, what was Sessom's legal status when he showed up in the courtroom two hours after the jury had been discharged? Put simply, he was an indicted alleged felon who had violated the condition of his appearance bond when he failed to appear for trial. Judge Ready told him that in the courtroom. Judge Ready specifically told Sessom that his bond was revoked and that he was placed in the custody of the sheriff so that he would be guaranteed to appear at his next scheduled trial date. Sessom got his information straight from the proverbial horse's mouth. It was only afterwards that Sessom forcibly broke away from the deputy sheriff and fled the courthouse.

¶ 13. Sessom was convicted under Section **97-9-49**(1) of the Mississippi Code. A common sense reading of the statute mandates the conclusion that a defendant who escapes custody from an underlying felony charge has committed a new felony; whereas, a defendant who escapes custody from an underlying misdemeanor charge has committed a new misdemeanor offense. A defendant who escapes the courthouse during a recess in his capital murder trial has not committed a misdemeanor. Conversely, a public drunk who runs away from an officer attempting to place him in handcuffs does not have to worry about five years in the penitentiary.

¶ 14. Sessom's appeal counsel suggests that Sessom was in contempt of court. Nowhere in this record is there any proof that Sessom was ever charged with contempt of court. Was it constructive contempt or direct contempt? When was his trial

scheduled on the contempt charge? Where is the court order that compels Sessom to be present on May 13, 2004? Where is the warrant for his arrest on contempt? Contempt of court was solely an idea of Sessom's attorney after his client's conviction. It certainly cannot be classified as a lesser-included offense of felony escape. What is more, counsel for Sessom cites *Williams v. State*, **420 So.2d 562** (Miss. 1982) as his authority. *Williams* was decided based upon Section **97-9-51** of the Mississippi Code. *Id.* at 563. In 1983, the Mississippi Legislature repealed Section **97-9-51**. Thus, Sessom relies on a case that not only interpreted a different statute than the one under which Sessom was convicted; Sessom relies on a case that interprets a statute that has since been repealed. *Williams* can hardly be said to have a binding effect on the present matter.

¶ 15. According to our reading of the statute, one commits the crime listed in **97-9-49**(1) under three disjunctive circumstances: when he or she (a) escapes from jail, or (b) escapes from custody by virtue of process issued by a court or judge, or (c) escapes from custody of a sheriff or some other peace officer pursuant to lawful arrest. If a defendant qualifies under either of those three disjunctive circumstances, he has committed a crime. Thereafter, the question of sentencing arises. It is over the appropriate sentencing that I collegially disagree with the dissent. The dissent concludes that Sessom was arrested for failing to timely appear for trial. We would hold otherwise. Sessom was initially arrested and placed into custody for three felony charges. Sessom secured his temporary and conditional release via his appearance bond. When Sessom violated his appearance bond, the circuit court judge revoked Sessom's bond and ordered Sessom to be returned to custody-imposed due to the underlying felony charges. Accordingly, he was not in custody for failure to timely appear at trial. Rather, he was in custody because his bond had been revoked on the three felony charges. His appearance bond may have placed a temporary "gap" in that custody, but it does not alter the underlying reasoning for his custody. Sessom would never have executed an appearance bond but for his arrest and subsequent indictment for the three felony charges against him.

¶ 16. The dissent notes that bond jumping is a misdemeanor. I agree. However, the record lacks any indication that Sessom was ever indicted or otherwise charged with bond jumping. I do not dispute that Sessom *could have been* charged with bond jumping, given his failure to appear at trial. As discussed above, we interpret the statute on escape to connect to the original reason Sessom was in custody: the three felony charges related to his attempt to smuggle drugs into a correctional facility, notwithstanding that there was an additional possible misdemeanor charge.

¶ 17. The evidence in this case is without any significant dispute. Sessom escaped from lawful custody. Sessom was taken into custody because he violated the conditions of his felony appearance bond on the underlying felony charge of conspiring to smuggle drugs into a correctional facility. We have previously held that one who escapes from custody while being held on felony charges commits felony escape and is subject to the punishment provisions of Section **97-9-49**(1). *See Cressionnie v. State*,

797 So.2d 289 (¶ 17) (Miss.Ct.App. 2001); *Edget v. State*, **791 So.2d 311** (¶ 5) (Miss.Ct.App. 2001). If *stare decisis* stands for anything, it stands for consistency.

2. Impeachment of Witness

¶ 18. Sessom argues that the court erred in allowing the prosecution to introduce the fact that Charlene Thomas had been convicted of the crime of conspiracy to bring drugs into a prison facility.**[fn3]** In support of this argument, Sessom cites Rule 609(a)(1) of the Mississippi Rules of Evidence for the proposition that the court must determine that the probative value of a prior conviction outweighs its prejudicial effect before allowing its admittance.

Rule 609(a)(1) states:

> For the purpose of attacking the credibility of a witness, (1) evidence that (A) a nonparty witness has been convicted of a crime shall be admitted subject to Rule 403, if the crime was punishable by death or imprisonment in excess of one year under the law under which the witness was convicted, and (B) a party has been convicted of such a crime shall be admitted if the court determines that the probative value of admitting this evidence outweighs its prejudicial effect to the party.

¶ 19. In his brief, Sessom argues that in deciding to allow the prosecution to impeach Thomas with proof of a prior conviction, the court essentially "tainted" the credibility and veracity of the one person who was an eyewitness to the events leading to his felony escape charge. According to Sessom, "the trial judge did not show why the conviction was probative as to the credibility of the witness." The Comment to Rule 609 states: "when the impeachment by convictions is of a witness other than the accused in a criminal case there is little or no unfair prejudice which can be caused to a party. Thus, the probative value of the credibility of the witness will almost always outweigh any prejudice."

¶ 20. The Mississippi Supreme Court has also spoken on the admissibility of prior convictions of nonparty witnesses under Rule 609: "Even where the non-party witness being impeached is one party's primary or sole witness, evidence of a prior conviction of that witness must be admitted if the requirements of Rule 609(a) . . . are met." *Moore v. State*, **787 So.2d 1282** (¶ 26) (Miss. 2001). In order to lessen the possibility of any prejudicial effect to Sessom that may have been caused by allowing Thomas to be impeached with proof of a prior conviction under Rule 609, the court ruled that Thomas's conviction would be allowed into evidence, but informed the prosecution that it would not be allowed to mention that Thomas's conviction was in any way related to Sessom's current charge.

¶ 21. The record reflects that the prosecution abided by the restriction placed on it by the trial judge, notwithstanding Sessom's contention to the contrary. The prosecution asked only one question regarding Thomas's criminal record, and did not

mention her conviction for conspiring with Sessom to bring drugs into the DeSoto County jail. The exchange between the prosecution and Thomas was as follows:

Q. Ms. Thomas, can we agree you're a convicted felon?

A. Yes, ma'am.

Q. Is it fair to say that you don't want the defendant [Sessom] to go to jail?

A. I don't want nobody to go to jail. I didn't want to go to jail, but I went to jail.

Q. Did you see the defendant [Sessom] on Most Wanted?

A. No, I didn't. I was incarcerated.

Q. Did the defendant [Sessom] leave the courthouse?

A. I presume he did because they was [sic] saying he was gone. So I don't know where he went to because I was in the back. I was handcuffed. I couldn't go nowhere until they came and got me.

The above exchange illustrates that Thomas volunteered the damaging testimony of which the defense now complains.

¶ 22. We find no merit to the contention that the trial court improperly allowed Thomas to be impeached by her prior felony conviction for conspiring with Sessom to bring marijuana into the DeSoto County Jail. For the foregoing reasons, we affirm.

¶ 23. THE JUDGMENT OF THE CIRCUIT COURT OF DESOTO COUNTY OF CONVICTION OF FELONY ESCAPE AND SENTENCE OF FIVE YEARS IN THE CUSTODY OF THE MISSISSIPPI DEPARTMENT OF CORRECTIONS IS AFFIRMED. ALL COSTS OF THIS APPEAL ARE ASSESSED TO THE APPELLANT.

LEE AND MYERS, P.JJ., SOUTHWICK, CHANDLER, GRIFFIS, BARNES AND ISHEE, JJ., CONCUR. IRVING, J., DISSENTS WITH SEPARATE WRITTEN OPINION, JOINED BY KING, C.J.

[fn1] Although Sessom mentions the denial of his motion for a new trial, his first issue attacks the sufficiency, rather than the weight, of the evidence.

[fn2] Sessom had already been arrested for the conspiracy charge and was out on bond on that offense. While Judge Ready testified that he stated to Sessom that he had revoked Sessom's bond, Judge Ready had not entered an order to that effect at the time of Sessom's escape.

[fn3] Thomas was Sessom's girlfriend. She attempted to bring marijuana into the DeSoto County Jail for Sessom, but her plan was thwarted by jail personnel. Thomas was arrested and convicted in connection with that incident.

IRVING, J., DISSENTING:

¶ 24. I find the evidence insufficient to sustain Sessom's conviction for felony escape, although I find it sufficient to support a conviction of misdemeanor escape. Consequently, I respectfully dissent. I would reverse Sessom's conviction for felony escape, and remand to the trial court for re-sentencing on misdemeanor escape.

¶ 25. The facts are sufficiently set forth in the majority opinion. Therefore, I will not repeat them here, except to add that when Sessom escaped from the bailiff, no order had been entered revoking his bond.[fn4] Also, the encounter with Sessom wherein Judge Ready explained to Sessom that Sessom's bond had been revoked did not occur during the court proceeding where the bench pronouncement was made.

¶ 26. Notwithstanding that Sessom had been legally released from jail on the original charges and no order had been entered revoking his bond, the majority finds that when Sessom escaped from the bailiff, he was in custody on the original felony charges.

Mississippi Code Annotated Section **97-9-49**(1), which states:

> Whoever escapes or attempts by force or violence to escape from any jail in which he is confined, *or from any custody under or by virtue of any process issued under the laws of the State of Mississippi by any court or judge, or from the custody of a sheriff or other peace officer pursuant to lawful arrest,* shall, upon conviction, *if the confinement or custody is by virtue of an arrest on a charge of felony,* or conviction of a felony, be punished by imprisonment in the penitentiary not exceeding five (5) years to commence at the expiration of his former sentence, or, if the confinement or custody is by virtue of an arrest of or charge for or conviction of a misdemeanor, be punished by imprisonment in the county jail not exceeding one (1) year to commence at the expiration of the sentence which the court has imposed or which may be imposed for the crime for which he is charged.

(emphasis added).

¶ 27. When Sessom fled from the courthouse, he was not fleeing from jail, nor was he in *"custody under or by virtue of any process issued under the laws of the State of Mississippi by any court or [by] [J]udge [Ready]". Id.* At most, he was in custody by virtue of his failing to appear for trial and by virtue of an oral command from Judge Ready to the bailiff to take Sessom into custody. Admittedly, an oral pronouncement in court that Sessom's bond was being revoked had occurred prior to the subsequent oral command to take Sessom into custody. However, the statute requires that the custody or confinement emanate from "process issued . . . by [a] court or judge. If Judge Ready's oral pronouncement that Sessom's bail was revoked and oral command to the bailiff that Sessom be taken into custody, constitute "process issued under the laws of the State of Mississippi," then the majority correctly affirms Sessom's conviction for felony

escape.

¶ 28. As already mentioned, before Sessom escaped, Judge Ready had informed him that his bond had been revoked. I do not believe, however, that informing Sessom that his bond had been revoked was "*process issued* under the laws of the State of Mississippi by . . . [J]udge [Ready]. (emphasis added). *Id.* In my opinion, the phrase, "process issued," as used in the statute means something more than a verbal statement to a defendant, and implies a written instrument of some sort.

¶ 29. While I agree with the majority that Sessom was in the "custody of a sheriff or other peace officer pursuant to [a] lawful arrest" when he escaped, I disagree that he was then in custody on the original felony charges. He was in custody because he had jumped bond, not because he was charged with having committed three felonies.[fn5] That Sessom was arrested for "bond jumping" is supported by Judge Ready's trial testimony that he was revoking Sessom's appearance bond and was ordering him placed under arrest in efforts to secure Sessom's presence at the next trial date.

¶ 30. The statute is clear. One may be convicted of felony escape if he is confined or is in custody: *by virtue of an arrest on a charge of felony or conviction of a felony*" and he (1) "*escapes or attempts by force or violence to escape from any jail in which he is confined,*" or (2) escapes or attempts by force or violence to escape "*from any custody under or by virtue of any process issued under the laws of the State of Mississippi by any court or judge, or from the custody of a sheriff or other peace officer pursuant to lawful arrest.*" Miss. Code Ann. § 97-9-49(1) (Supp. 2005).

¶ 31. The majority fails to give effect to the portion of the statute which makes it a felony to escape *only if the confinement or custody is by virtue of an arrest on a charge of felony*, or conviction of a felony. While it is true that Sessom could not later be arrested for "bond jumping" in the absence of the existence of the felony charges for which he had made bail, the fact is that, when he made bail, he was legally free of custody or confinement on those felony charges. So, when Judge Ready ordered the bailiff to take Sessom into custody, for what was Sessom being arrested? Was it for the original felony crimes or was it for failing to timely appear for trial on those charges? Clearly, it was the latter. Therefore, when Sessom escaped, he was escaping from custody which had been imposed *by virtue of an arrest for "bond jumping,"* that is, failing to timely appear in court. "Bond jumping" is not a felony offense. Miss. Code Ann. § 83-39-29(5) (Supp. 2005).

¶ 32. The majority improperly dissects 97-9-49(1) to arrive at three disjunctive circumstances which constitute a violation of the statute. Since section 97-9-49(1) addresses both felony and misdemeanor escape, any construction of the statute which does not consider separately the prerequisites for felony or misdemeanor escape is flawed. With humility and respect, I must say that the analysis of the majority is flawed because it pretermits the statutory predicate for felony escape: that the defendant is confined or is in custody *"by virtue of an arrest*

on a charge of felony or conviction of a felony." If the predicate does not exist, there is no basis for considering the three disjunctive factual scenarios.

¶ 33. The majority also spends time discussing the felony charges that were pending against Sessom when he was arrested for "bond jumping." The fact that these charges were pending is not the primary reason Sessom was arrested. Further, the majority discusses *Sandoval v. State*, **631 So. 2d 159** (Miss. 1994), finding that, based on *Sandoval*, the circuit court could not have tried Sessom in his absence. I agree, but, that Sessom could not be tried *in absentia* on the existing felony charges, did not make the arrest, which led to the new confinement or custody, an arrest on a charge of felony. To illustrate my point, suppose Sessom had timely appeared in court for his trial on the felony charges and, upon his arrival, had committed simple assault against a person at the courthouse. The judge had then ordered him arrested because commission of the simple assault violated the terms and condition of his bond that he refrain from violating the criminal laws of the State of Mississippi. While being taken into custody on the simple assault charge, Sessom escaped. Would he have been in custody by virtue of felony or by virtue of a misdemeanor?

¶ 34. As stated, when Sessom was allowed to make bail, he was lawfully released from custody on the underlying felonies for which he was later to stand trial. Therefore, he was no longer *confined or in custody by virtue of an arrest on a charge of felony.* Although Sessom's freedom was conditional, and Judge Ready had revoked that conditional freedom, the revocation did not result in Sessom's being arrested on a charge of felony as required by statute in order to sustain a conviction for felony escape. Revoking Sessom's freedom and returning him to confinement or custody, such that he could be tried for felony escape if he later tried to escape, required the issuance of lawful process to vacate the previously lawfully-issued order for bail. Before that could occur, Sessom escaped from custody, imposed by virtue of an arrest for "bond jumping," a misdemeanor.

¶ 35. I would affirm Sessom's conviction for the lesser offense of misdemeanor escape and remand for resentencing.

KING, C.J., JOIN THIS OPINION.

[fn4] At the time of his escape, Sessom had been out on bond on the conspiracy charge and two other charges.

[fn5] Mississippi Code Annotated section **83-39-29**(5) (Supp. 2005) provides:

> Any person charged with a criminal violation who has obtained his release from custody by having a professional bail agent, insurer, agent of a bail agent or insurer, or any person other than himself furnish his bail bond and who fails to appear in court, at the time and place ordered by the court, is guilty of "bond jumping" and upon conviction, shall be subject to a fine of not more than One Thousand Dollars ($1,000.00), imprisonment in the count jail

for not more than one (1) year, or both, and payment of restitution for reasonable expenses incurred returning the defendant to court.

CRIME STOPPERS LEGISLATION

MISSISSIPPI

Mississippi Code of 1972

Section 45-39-1. Definitions.

As used in this chapter:

(a) "Council" means the Crime Stoppers Advisory Council.

(b) "Local crime stoppers program" means the acceptance and spending of donations by a private, nonprofit organization for the awarding of rewards to persons who report information concerning criminal activity to the organization if the organization:

(i) Operates less than statewide; and

(ii) Forwards reported information to the appropriate law enforcement agency.

Section 45-39-3. Creation.

There is hereby created within the Department of Public Safety the Crime Stoppers Advisory Council. The council shall be composed of five (5) persons appointed by the Governor with the advice and consent of the Senate. At least three (3) of the foregoing appointees shall be persons who have participated in a local crime stoppers program. Each member of the council shall serve for a term of two (2) years or until his successor is appointed and qualifies. At the first meeting of the council, which shall be called by the Governor, and at the first meeting after the beginning of each new state fiscal hear, the council shall elect from among its members a chairman and such other officers as the council deems necessary. Each member of the council shall receive per diem in the amount established un Section 25-3-69, Mississippi Code of 1972, for each day or portion thereof spent discharging his duties under this chapter and shall receive mileage and expenses as proceed in Section 25-3-41, Mississippi Code of 1972.

Expenses of the council shall be paid by the Department of Public Safety out of the State Crime Stoppers Fund, created in Section 45-39-5(4).

Section 45-39-5. Duties; powers and authority.

(1) The council ma contract with a person to serve as its director or, with the concurrence of the Commissioner of Public Safety, may employ an individual within the Department of Public Safety to serve as director. The council shall establish the authority and responsibilities of the director.

(2) The council shall:

(a) Advise and assist in the creation of local crime stoppers programs;

(b) Foster the detection of crime and encourage persons to report information about criminal acts;

(c) Encourage news and other media to promote local crime stoppers programs and to inform the public of the functions of the council;

(d) Assist local crime stoppers programs in forwarding information about criminal acts to the appropriate law enforcement agencies; and

(e) Help law enforcement agencies detect and combat crime by increasing the flow of information to and between law enforcement agencies.

(3) The council may adopt rules to carry out its duties under this chapter.

(4) The assessments collected under subsection (5) of Section 99-19-73, Mississippi Code of 1972, and any other funds as may be made available through contributions from private or public sources, shall be deposited in a special fund that is hereby created in the State Treasury and designated the State Crime Stoppers Fund. Monies deposited in the fund shall be expended by the council, pursuant to appropriation therefore by the Legislature, for the authorized purposes of the State Crime Stoppers Program established under this chapter, including, but not limited to, providing reward monies for individuals who legitimately report crime activity. Any such funds paid to such individuals shall be kept confidential by the council, and any audit of the fund and expenditures to such individuals. The Department of Public Safety shall have the authority to accept, budget and expend for any proper expenses of the Crime Stoppers Advisory Council any special source funds made available to the Crime Stoppers Program subject to the approval of the Department of Finance and Administration and in accordance with procedures for federal fund escalations as established in Section 27-104-21.

Section 45-39-7 Records; confidentiality.

(1) Council records relating to reports of criminal acts are confidential.

(2) Evidence of a communication between a person submitting a report of a criminal act to the council or a local crime stoppers program and the person who accepted the report on behalf of the council or local crime stoppers program is not admissible in a court or an administrative proceeding whether the evidence is held by the council or a local crime stoppers program or is held by a telecommunication service provider.

(3) Records of the council or a local crime stoppers program concerning a report of a criminal activity and records of a telecommunication service provider relating to a report made to the council or to a local crime stoppers program may not be compelled to be produced before a court or other tribunal except on the motion of a criminal defendant to the court in which the

offense is being tried that the records or report contain evidence that is exculpatory to the defendant in the trial of that offense. On motion of a defendant under this subsection, the court may subpoena the record or report. The court shall conduct an in-camera inspection of materials produced under subpoena to determine whether the materials contain evidence that is exculpatory to the defendant. If the court determines that the materials produced contain evidence that is exculpatory to the defendant, the court shall present the evidence to the defendant in a form that does not disclose the identity of the person who was the source of the evidence, unless the state or federal constitution requires the disclosure of that person's identity. The court shall execute an affidavit accompanying the disclosed materials swearing that, in the opinion of the court, the materials disclosed represent the exculpatory evidence the defendant is entitled to receive under this section. The court shall return to the council or to the local crime stoppers program materials that are produced under the section but not disclosed to the defendant. The council or local crime stoppers program shall store the materials until the conclusion of the criminal trial and the expiration of the crime for all direct appeals in the case.

Section 45-39-9. Offenses.

A person who is a member or employee of the council or who accepts a report of a criminal activity on behalf of a local crime stoppers program is guilty of a misdemeanor if the person intentionally or knowingly divulges to a person not employed by the law enforcement agency the content of a report of a criminal act or the identity of the person who made the report without the consent of the person who made the report.

A person convicted of an offense under this section shall be punished as provided in Section 99-19-31, Mississippi Code of 1972, and is not eligible for state employment during the five-year period following the date that the conviction becomes final.

Section 45-39-11. Establishment and operation of a toll-free telephone number for reporting information about criminal acts.

The council shall establish and operate a toll-free telephone service and make the service accessible to persons residing in areas of the state not served b a local crime stoppers program for reporting to the council information about criminal acts. The toll-free service must be available between the hours of 5:00 p.m. and 8:00 a.m. Monday through Thursday and from 5:00 p.m. Friday until 8:00 a.m. Monday. The council shall forward the information received to appropriate law enforcement agencies or local crime stoppers programs.

Section 45-39-13. Intent

The establishment of any Crime Stoppers Advisory Council shall not impede the intent or process of the Vulnerable Adults Acts of 1986 as provided in Section 43-47-1 et seq.

Section 45-39-15. County wide crime stoppers programs.

The board of supervisors of a county and the governing authority of a municipality are authorized to contribute funds to a local crime stoppers program from the general fund of the county or municipality or any other available source if the local crime stoppers program is established to operate in whole or in part, within the boundaries of that county or municipality.

This chapter shall not repeal or affect any local and private act establishing a county or local crime stoppers program providing for the operation and funding of such program.

Section 45-39-17. In addition to any other monetary penalties and other penalties imposed by law, any county or municipality by ordinance may assess an additional surcharge in an amount not to exceed Two Dollars ($2.00) on each person upon whom a county, justice or municipal court imposes a fine or other penalty for any misdemeanor other than offenses relating to vehicular parking or registration if there is established to the benefit of the citizens of that county or municipality a local crime stoppers program which is not authorized to receive funds under local and private legislation. The proceeds from the surcharge may be used by a county or municipality only to fund that county's or municipality's support of the local crime stoppers program as authorized by Section 45-39-15, Mississippi Code of 1972. The proceeds from the surcharge imposed by this subsection shall be deposited into a special fund in the Department of Public Safety's Office of Public Safety Planning which shall promulgate rules and procedures relating to the administration of the special fund and the disbursement of monies in the fund to participating counties and municipalities. The maximum amount that a county or municipality may receive from the special fund shall e an amount equal to the deposits made into the fund by that entity, less one percent (1%) to e retained by the Office of Public Safety Planning to defray the costs of administering the special fund interest earned on the special fund shall remain in the fund and shall be used by the Office of Public Safety Planning to further defray the costs of administering the special fund.

MISSISSIPPI

House Bill 1672

AN ACT TO AUTHORIZE THE BOARD OF SUPERVISORS OF MADISON COUNTY, MISSISSIPPI, TO LEVY ADDITIONAL COURT COSTS FOR EACH MISDEMEANOR CASE FILED IN ITS JUSTICE COURT; TO PROVIDE THAT THE AVAILS OF SUCH ADDITIONAL ASSESSMENT SHALL BE PAID TO METRO JACKSON CRIME STOPPERS INCORPORATED; AND FOR RELATED PURPOSES.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MISSISSIPPI:

SECTION 1. (1) The Board of Supervisors of Madison County, Mississippi, is hereby authorized and empowered, in its discretion, by resolution duly adopted and entered on the minutes of the board of supervisors, to levy additional court costs in an amount not to exceed One Dollar ($1.00) per case for each misdemeanor case filed in the justice court of such county;

(2) The avails of any additional court costs imposed pursuant to subsection (1) of this section shall be paid monthly by the county to Metro Jackson Crime Stoppers, Inc., for use in procuring information which will lead to the capture and conviction of persons committing crimes and in support of good law enforcement.

(3) The provisions of this section shall be repealed from and after its passage.

SECTION 2. This act shall take effect and be in force from and after its passage.

Approved: March 29, 2001 by the Governor.

MISSISSIPPI

House Bill 1676

AN ACT TO AUTHORIZE THE GOVERNING AUTHORITIES OF THE CITY OF PEARL, MISSISSIPPI, TO LEVY ADDITIONAL COURT COSTS FOR EACH MISDEMEANOR CASE FILED IN ITS MUNICIPAL COURT; TO PROVIDE THAT THE AVAILS OF SUCH ADDITIONAL ASSESSMENT SHALL BE PAID TO METRO JACKSON CRIME STOPPERS, INCORPORTED; AND FOR RELATED PURPOSES.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MISSISSIPPI:

SECTION 1. (1) The governing authorities of the City of Pearl are hereby authorized and empowered, in their discretion, by resolution duly adopted and entered on the minutes of the governing authorities, to levy additional court costs in an amount not to exceed One Dollar ($1.00) per case for each misdemeanor case filed in the municipal court of such municipality.

(2) The avails of any additional court costs imposed pursuant to subsection (1) of this section shall be paid monthly by the municipality to Metro Jackson Crime Stoppers, Inc., for use in procuring information which will lead to the capture and conviction of persons committing crimes and in support of good law enforcement.

(3) The provisions of this section shall be repealed from and after July 1, 2002.

SECTION 2. This act shall take effect and be in force from and after its passage.

Approved: March 29, 2001 by the Governor

MISSISSIPPI

House Bill 1675

AN ACT TO AUTHORIZE THE GOVERNING AUTHORITIES OF THE CITY OF FLOWOOD, MISSISSIPPI, TO LEVY ADDITIONAL COURT COSTS FOR EACH MISDEMEANOR CASE FILED IN ITS MUNICIPAL COURT; TO PROVIDE THAT THE AVAILS OF SUCH ADDITIONAL ASSESSMENT SHALL BE PAID TO METRO JACKSON CRIME STOPPERS, INCORPORTED; AND FOR RELATED PURPOSES.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MISSISSIPPI:

SECTION 1. (1) The governing authorities of the City of Flowood are hereby authorized and empowered, in their discretion, by resolution duly adopted and entered on the minutes of the governing authorities, to levy additional court costs in an amount not to exceed One Dollar ($1.00) per case for each misdemeanor case filed in the municipal court of such municipality.

(2) The avails of any additional court costs imposed pursuant to subsection (1) of this section shall be paid monthly by the municipality to Metro Jackson Crime Stoppers, Inc., for use in procuring information which will lead to the capture and conviction of persons committing crimes and in support of good law enforcement.

(3) The provisions of this section shall be repealed from and after July 1, 2002.

SECTION 2. This act shall take effect and be in force from and after its passage.

Approved: March 29, 2001 by the Governor

MISSISSIPPI

House Bill 1677

AN ACT TO AUTHORIZE THE BOARD OF SUPERVISORS OF RANKIN COUNTY, MISSISSIPPI, TO LEVY ADDITIONAL COURT COSTS FOR EACH TRAFFIC VIOLATION AND MISDEMEANOR CASE FILED IN THE JUSTICE AND COUNTY COURTS OF THE COUNTY; TO PROVIDE THT THE AVAILS OF SUCH ADDITIONAL ASSESSMENT SHALL BE PAID TO METRO JACKSON CRIME STOPPERS INCORPORATED; AND FOR RELATED PURPOSES.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MISSISSIPPI:

SECTION 1. (1) The Board of Supervisors of Rankin County, Mississippi, in its discretion, by resolution duly adopted and entered on its minutes, may levy an assessment, in addition to other assessments and court costs, not to exceed One Dollar ($1.00) per case, for each traffic violation and misdemeanor case filed in the justice and county courts of Rankin County;

(2) The avails of any additional assessment imposed pursuant to subsection (1) of this section shall be expended by the county to fund Metro Jackson Crime Stoppers, Incorporated, for use in crime prevention and procuring information to aid authorities in the capture of persons committing crimes in the county.

(3) The provisions of this section shall be repealed from and after its passage.

SECTION 2. This act shall take effect and be in force from and after its passage.

Approved: March 29, 2001 by the Governor.

MISSISSIPPI

House Bill 1686

AN ACT TO AUTHORIZE THE BOARD OF SUPERVISORS OF LAWRENCE COUNTY, MISSISSIPPI, TO LEVY AN ASSESSMENT, IN ADDITION TO ANY OTHER ASSESSMENTS AND COURT COSTS, FOR EACH MISDEMEANOR CASE PROCESSED THROUGH THE LAWRENCE COUNTY JUSTICE COURT; TO PROVIDE THAT THE AVAILS OF SUCH ADDITIONAL ASSESSMENT SHALL BE USED TO FUND THE PINE BELT CRIME STOPPERS; AND FOR RELATED PURPOSES.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MISSISSIPPI:

SECTION 1. (1) The Board of Supervisors of Lawrence County, Mississippi, in its discretion, is authorized, by resolution duly adopted and entered on its minutes, to levy an assessment, in addition to other assessments and court costs, in the amount of One Dollar ($1.00) per case, for each misdemeanor case processed through the justice court of such County.

(2) The avails of any additional assessment imposed under subsection (1) of this section shall be distributed by the county to Pine Belt Crime Stoppers for use in procuring information to aid authorities in the capture and conviction of persons committing crimes in Lawrence County.

(3) The provisions of this section shall be repealed from and after July 1, 2002.

SECTION 2. This act shall take effect and be in force from and after its passage.

Approved: April 7, 2001 by the Governor.

MISSISSIPPI

House Bill 1687

AN ACT TO AUTHORIZE THE GOVERNING AUTHORITIES OF THE TOWN OF MONTICELLO, MISSISSIPPI, TO LEVY AN ASSESSMENT, IN ADDITION TO ANY OTHER ASSESSMENTS AND COURT COSTS, FOR EACH MISDEMEANOR CASE PROCESSED THROUGH THE MUNICIPAL COURT; TO PROVIDE THAT THE AVAILS OF SUCH ADDITIONAL ASSESSMENT SHALL BE USED TO FUND THE PINE BELT CRIME STOPPERS, AND FOR RELATED PURPOSES.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MISSISSIPPI:

SECTION 1. (1) The governing authorities of the Town of Monticello, Mississippi, in the discretion, by resolution duly adopted and entered on the minutes, are authorized to levy an assessment, in addition to any other assessments and court costs, in the amount of One Dollar ($1.00) per case for each misdemeanor case processed through the municipal court of such city.

(2) The avails of any additional court costs imposed under subsection (1) of this section shall be paid, on a monthly basis, by the town to the Pine Belt Crime Stoppers, for use in procuring information to aid authorities in the capture and conviction of persons committing crimes in Monticello, Mississippi.

(3) The provisions of this section shall be repealed from and after July 1, 2002.

SECTION 2. This act shall take effect and be in force from and after its passage.

Approved: April 7, 2001 by the Governor

MISSISSIPPI

House Bill 3179

AN ACT TO AUTHORIZE THE GOVERNING AUTHORITIES OF THE CITY OF COLUMBIA, MISSISSIPPI, TO LEVY AN ASSESSMENT, IN ADDITION TO ANY OTHER ASSESSMENTS AND COURT COSTS, FOR EACH MISDEMEANOR CASE FILED THROUGH ITS MUNICIPAL COURT; TO PROVIDE THAT THE AVAILS OF SUCH ADDITIONAL ASSESSMENT SHALL BE USED TO SUPPORT THE PINE BELT CRIME STOPPERS PROGRAM OF THE MUNICIPALITY; AND FOR RELATED PURPOSES.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MISSISSIPPI:

SECTION 1. (1) The governing authorities of the City of Columbia, Mississippi, in their discretion, are authorized, by resolution duly adopted and entered on the minutes of the governing authorities, to levy an assessment, in addition to any other assessments and court costs, not to exceed One Dollar ($1.00) per case, for each misdemeanor case filed in the municipal court of the City of Columbia.

(2) The avails of any additional assessment imposed pursuant to subsection (1) of this section shall be paid monthly by the City of Columbia to the Pine Belt Crime Stoppers for use in procuring information to aid authorities in the capture and conviction of persons committing crimes and in support of good law enforcement.

(3) The provisions of this section shall be repealed from and after July 1, 2002.

SECTION 2. This act shall take effect and be in force from and after its passage.

Approved: April 16, 2001 by the Governor.

MISSISSIPPI

Senate Bill 3181

AN ACT TO AUTHORIZE THE GOVERNING AUTHORITIES OF THE TOWN OF PRENTISS, MISSISSIPPI, TO LEVY AN ASSESSMENT, IN ADDITION TO ANY OTHER ASSESSMENTS AND COURT COSTS, FOR EACH MISDEMEANOR CASE FILED IN ITS MUNICIPAL COURT; TO PROVIDE THAT THE AVAILS OF SUCH ADDITIONAL ASSESSMENT SHALL BE USED TO SUPPORT THE PINE BELT CRIME STOPPERS PROGRAM; AND FOR RELATED PURPOSES.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MISSISSIPPI:

SECTION 1. (1) The governing authorities of the Town of Prentiss, Mississippi, in their discretion, are authorized, by resolution duly adopted and entered on the minutes of the governing authorities, to levy an assessment, in addition to any other assessments and court costs, not to exceed One Dollar ($1.00) per case, for each misdemeanor case filed in the municipal court of the Town of Prentiss.

(2) The avails of any additional assessment imposed pursuant to subsection (1) of this section shall be paid monthly by the Town of Prentiss to Pine Belt Crime Stoppers for use in procuring information to aid authorities in the capture and conviction of persons committing crimes and in support of good law enforcement.

(3) The provisions of this section shall be repealed from and after July 1, 2002.

SECTION 2. This act shall take effect and be in force from and after its passage.

Approved: April 16, 2001 by the Governor.

MISSISSIPPI

Senate Bill 3203

AN ACT TO AUTHORIZE THE BOARD OF SUPERVISORS OF COVINGTON COUNTY, MISSISIPPI, TO LEVY AN ASSESSMENT, IN ADDITION TO ANY OTHER ASSESSMENTS AND COURT COSTS, FOR EACH MISDEMEANOR CASE PROCESSED THROUGH THE JUSTICE COURT OF COVINGTON COUNTY; TO PROVIDE THAT THE AVAILS OF SUCH ADDITIONAL ASSESSMENT SHALL BE USED TO SUPPORT THE PINE BELT CRIME STOPPERS; AND FOR RELATED PURPOSES.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MISSISSIPPI:

SECTION 1. (1) The Board of Supervisors of Covington County, Mississippi, in its discretion, is authorized, by resolution duly adopted and entered on its minutes, to levy an assessment, in addition to any other assessments and court costs, in the amount of One Dollar ($1.00) per case, for each misdemeanor case processed through the justice court of the such county.

(2) The avails of any additional assessment imposed under to subsection (1) of this section shall be distributed by the county to Pine Belt Crime Stoppers for use in procuring information to aid authorities in the capture and conviction of persons committing crimes and in the five-county area covered by Pine Belt Crime Stoppers.

(3) The provisions of this section shall be repealed from and after July 1, 2002.

SECTION 2. This act shall take effect and be in force from and after its passage.

Approved: April 16, 2001 by the Governor.

MISSISSIPPI

Senate Bill 3204

AN ACT TO AUTHORIZE THE BOARD OF SUPERVISORS OF SIMPSON COUNTY, MISSISSIPPI, TO LEVY AN ASSESSMENT, IN ADDITION TO ANY OTHER ASSESSMENTS AND COURT COSTS, FOR EACH MISDEMEANOR CASE PROCESSED THROUGH THE JUSTICE COURT OF SIMPSON COUNTY; TO PROVIDE THAT THE AVAILS OF SUCH ADDITIONAL ASSESSMENT SHALL BE USED TO SUPPORT THE PINE BELT CRIME STOPPERS; AND FOR RELATED PURPOSES.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MISSISSIPPI:

SECTION 1. (1) The Board of Supervisors of Simpson County, Mississippi, in its discretion, is authorized, by resolution duly adopted and entered on its minutes, to levy an assessment, in addition to any other assessments and court costs, in the amount of One Dollar ($1.00) per case, for each misdemeanor case processed through the justice court of the such county.

(2) The avails of any additional assessment imposed under to subsection (1) of this section shall be distributed by the county to Pine Belt Crime Stoppers for use in procuring information to aid authorities in the capture and conviction of persons committing crimes and in the five-county area covered by Pine Belt Crime Stoppers.

(3) The provisions of this section shall be repealed from and after July 1, 2002.

SECTION 2. This act shall take effect and be in force from and after its passage.

Approved: April 16, 2001 by the Governor.

MISSISSIPPI

Senate Bill 3205

AN ACT TO AUTHORIZE THE GOVERNING AUTHORITIES OF THE TOWN OF BASSFIELD, MISSISSIPPI, TO LEVY AN ASSESSMENT, IN ADDITION TO ANY OTHER ASSESSMENTS AND COURT COSTS, FOR EACH MISDEMEANOR CASE FILED IN ITS MUNICIPAL COURT; TO PROVIDE THAT THE AVAILS OF SUCH ADDITIONAL ASSESSMENT SHALL BE USED TO SUPPORT THE PINE BELT CRIME STOPPERS PROGRAM; AND FOR RELATED PURPOSES.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MISSISSIPPI:

SECTION 1. (1) The governing authorities of the Town of Bassfield, Mississippi, in their discretion, are authorized, by resolution duly adopted and entered on the minutes of the governing authorities, to levy an assessment, in addition to any other assessments and court costs, not to exceed One Dollar ($1.00) per case, for each misdemeanor case filed in the Municipal Court of the Town of Bassfield.

(2) The avails of any additional assessment imposed pursuant to subsection (1) of this section shall be distributed by the Town of Bassfield to Pine Belt Crime Stoppers for use in procuring information to aid authorities in the capture and conviction of persons committing crimes and in the five-county area covered by Pine Belt Crime Stoppers.

(3) The provisions of this section shall be repealed from and after July 1, 2002.

SECTION 2. This act shall take effect and be in force from and after its passage.

Approved: April 16, 2001 by the Governor.

MISSISSIPPI

Section 99-19-73, Mississippi Code of 1972

99-19-73. (1) **Traffic Violations.** In addition to any monetary penalties and any other penalties imposed by law, there shall be imposed and collected the following state assessment from each person upon whom a court imposes a fine or other penalty for any violation in Title 63, Mississippi Code of 1972, except offenses relating to the Mississippi Implied Consent Law (Section 63-11-1 et seq.) and offenses relating to vehicular parking or registration:

FUND	AMOUNT
State Court Education Fund	$ 1.50
State Prosecutor Education Fund	.50
Driver Training Penalty Assessment Fund	7.00
Law Enforcement Officers Training Fund	5.00
Spinal Cord and Head Injury Trust Fund (for all moving violations)	4.00
Emergency Medical Services Operating Fund	5.00
TOTAL STATE ASSESSMENT	$ 23.00

(2) **Implied Consent law Violations.** In addition to any monetary penalties and any other penalties imposed by law, there shall be imposed and collected the following state assessment from each person upon whom a court imposes a fine or any other penalty for any violation of the Mississippi Implied Consent Law (Section 63-11-1 et seq.):

FUND	AMOUNT
Crime Victims' Compensation Fund	$ 10.00
State Court Education Fund	1.50
State Prosecutor Education Fund	.50
Driver Training Penalty Assessment Fund	22.00
Law Enforcement Officers Training Fund	11.00
Emergency Medical Services Operating Fund	5.00
Mississippi Alcohol Safety Education Program Fund	5.00
Federal-State Alcohol Program Fund	10.00
Mississippi Crime Laboratory Implied Consent Law Fund	25.00
Spinal Cord and Head Injury Trust Fund	25.00
State General Fund	35.00
TOTAL STATE ASSESSMENT	$150.00

(3) **Game and Fish Law Violations.** In addition to any monetary penalties and any other penalties imposed by law, there shall be imposed and collected the following state

assessment from each person upon whom a court imposes a fine or other penalty for any violation of the game and fish statutes or regulations of this state:

FUND	AMOUNT
State Court Education Fund	$ 1.50
State Prosecutor Education Fund	.50
Law Enforcement Officers Training Fund	5.00
Hunter Education and Training Program Fund	5.00
State General Fund	30.00
TOTAL STATE ASSESSMENT	$ 42.00

(4) **Litter Law Violations.** In addition to any monetary penalties and any other penalties imposed by law, there shall be imposed and collected the following state assessment from each person upon whom a court imposes a fine or other penalty for any violation of Section 97-15-29 or 97-15-30:

FUND	AMOUNT
Statewide Litter Prevention Fund	$ 25.00
TOTAL STATE ASSESSMENT	$ 25.00

(5) **Other Misdemeanors.** In addition to any monetary penalties and any other penalties imposed by law, there shall be imposed and collected the following state assessment from each person upon whom a court imposes a fine or other penalty for any misdemeanor violation not specified in subsection (1), (2) or (3) of this section, except offenses relating to vehicular parking or registration:

FUND	AMOUNT
Crime Victims' Compensation Fund	$ 10.00
State Court Education Fund	1.50
State Prosecutor Education Fund	.50
Law Enforcement Officers Training Fund	5.00
State General Fund	30.00
State Crime Stoppers Fund	1.50
TOTAL STATE ASSESSMENT	$ 48.50

(6) **Other Felonies.** In addition to any monetary penalties and any other penalties imposed by law, there shall be imposed and collected the following state assessment from each person upon whom a court imposes a fine or other penalty for any felony violation not specified in subsection (1), (2) or (3) of this section:

FUND	AMOUNT
Crime Victims' Compensation Fund	$ 10.00
State Court Education Fund	1.50
State Prosecutor Education Fund	.50
Law Enforcement Officers Training Fund	5.00
State General Fund	60.00
Criminal Justice Fund	50.00
TOTAL STATE ASSESSMENT	$ 127.00

(7) If a fine or other penalty imposed is suspended, in whole or in part, such suspension shall not affect the state assessment under this section. No state assessment imposed under the provisions of this section may be suspended or reduced by the court.

(8) After a determination by the court of the amount due, it shall be the duty of the clerk of the court to promptly collect all state assessments imposed under the provisions of this section. The state assessments imposed under the provisions of this section may not be paid by personal check. It shall be the duty of the chancery clerk of each county to deposit all such state assessments collected in the circuit, county and justice courts in such county on a monthly basis with the State Treasurer pursuant to appropriate procedures established by the State Auditor. The chancery clerk shall make a monthly lump-sum deposit of the total state assessments collected in the circuit, county and justice courts in such county under this section, and shall report to the Department of Finance and Administration the total number of violations under each subsection for which state assessments were collected in the circuit, county and justice courts in such county during such month. It shall be the duty of the municipal clerk of each municipality to deposit all such state assessments collected in the municipal court in such municipality on a monthly basis with the State Treasurer pursuant to appropriate procedures established by the State Auditor. The municipal clerk shall make a monthly lump-sum deposit of the total state assessments collected in the municipal court in such municipality under this section, and shall report to the Department of Finance and Administration the total number of violations under each subsection for which state assessments were collected in the municipal court in such municipality during such month.

(9) It shall be the duty of the Department of Finance and Administration to deposit on a monthly basis all such state assessments into the proper special fund in the State Treasury. The monthly deposit shall be based upon the number of violations reported under each subsection and the pro rata amount of such assessment due to the appropriate special fund. The Department of Finance and Administration shall issue regulations providing for the proper allocation of these special funds.

(10) The State Auditor shall establish by regulation procedures for refunds of state assessments, including refunds associated with assessments imposed before July 1, 1990, and refunds after appeals in which the defendant's conviction is reversed. The auditor shall provide in such regulations for certification of eligibility for refunds and may require the defendant seeking a refund to submit a verified copy of a court order or abstract by which such defendant is

entitled to a refund. All refunds of state assessments shall be made in accordance with the procedures established by the auditor.

COMMENTARY

This is yet another of the excellent comprehensive state statutes enhancing the Crime Stoppers program. It has many of the best features of the Texas legislation. The state Council is considered to be one of the better ones currently in existence.

The Mississippi Legislature made significant changes with amendments in 2001. Most significant was the provision which allowed for more special funding of Crime Stoppers programs by the county and municipal governments. Additionally, the 2001 amendments included the most specific legislation to date which protected Crime Stoppers records in the hands of "telecommunications service" providers. Such legislation was in the aftermath of a much-publicized case in Quincy, Illinois in which the telephone records of a local Crime Stoppers program were subpoenaed by a criminal defendant.

CASE SCENARIOS:

Michael Carmen murder case
Kevin Baker rape case
Frank San Felippo auto theft ring case
James Garcia murder case
"Rapid" Ricky Garcia fugitive case

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