CHECKLIST FOR "MOTION TO QUASH"

[ ] Is the recipient of the Subpoena Duces Tecum actually the person who has care, control, and custody of the records sought? If not, object and point to the person, persons, or agency having such control or custody.

[ ] Does the Subpoena Duces Tecum properly describe the items sought? If overly broad or vague, object.

[ ] If the Subpoena Duces Tecum has not met any applicable procedural requirements of the law, cite the legal authority and point out the failures to comply.

[ ] Make a strong argument for the public policy which favors *Crime Stoppers* and the keeping of the promise of "anonymity", and stress that allowing the Subpoena Duces Tecum to stand will have a *chilling* effect on *Crime Stoppers* and take away from the right of the people to be able to safely communicate crime-solving information without the fear of retaliation.

[ ] Whether provided for by law or not, ask that the Court consider an *in camera* inspection of the *Crime Stoppers* documents as an alternative to simply allowing the Subpoena Duces Tecum to be enforced.

[ ] Cite any court decisions and statutes applicable for your jurisdiction. If there are none, then list court decisions from other jurisdictions which are favorable to protecting *Crime Stoppers* records and information. These cases can be urged as *secondary* or *persuasive authority*.

NO. 01-CR-1200-A

THE STATE OF TEXAS	][	IN THE DISTRICT COURT
	][	
VS.	][	107TH JUDICIAL DISTRICT
	][	
GUADALUPE MERCADO PENA	][	CAMERON COUNTY, TEXAS

STATE'S RESPONSE TO DEFENDANT'S "MOTION FOR DISCOVERY AND INSPECTION, EXAMINATION OF EVIDENCE"

TO THE HONORABLE JUDGE OF SAID COURT:

Now comes TERRA BAY, attorney for the State of Texas in the above-styled and numbered cause and moves the Honorable Court to deny the Defendants motion for discovery of "any and all Crime-stoppers (sic) records, ledgers, logs, documents and audio or visual recordings identifying an anonymous caller, anonymous tips and information pertaining to this Defendant, if any" for the following reasons:

1. **Evidence of a communication between a person submitting a report of a criminal act to the Texas Crime Stoppers Advisory Council or a local Crime Stoppers organization and the person who accepted the report on behalf of the Council or a local Crime Stoppers organization is not admissible in a court or administrative proceeding according to the express language of Section 414.008 of the *Texas Government Code.***

2. **To divulge the content of such a communication in a manner not authorized by law would be a Class A misdemeanor under Section 414.009 of the *Texas Government Code.***

3. **Pursuant to Section 414.008 of the *Texas Government Code*, there can be no disclosure of the information sought unless the defendant in a criminal case has:**
    a. **Filed a motion alleging that the records or reports of the communication to Crime Stoppers contains information which is exculpatory to the defendant.**

b. **A judge has first examined the records or report of the communication to Crime Stoppers and determined that there is "exculpatory" evidence contained therein.**
c. **A judge has first redacted from any such record or report any and all information which would disclose or tend to disclose the identity of the person making the communication or report of criminal acts to the Crime Stoppers organization or its agent.**

4. **According to Section 414.008 (c) of the *Texas Government Code*, the Judge of the criminal court in which the defendant's case is pending is the only authority or official who can allow a subpoena to be issued for Crime Stoppers records, and such authority is *discretionary* because the statute uses the word "may", not "shall".**

5. **The defendant has failed to allege that any exculpatory evidence exists within the records of Crime Stoppers.**

6. **The attempt to subpoena the records of Crime Stoppers is nothing more than a *fishing expedition* by the defendant, as it is unsupported by any predicate or showing of any compelling need under the *Texas Constitution* or the *United States Constitution*.**

7. **To allow the defendant to subpoena the records of Crime Stoppers in the manner attempted would be tantamount to allowing the defendant to ignore the statutory and case law[1] which exists in the State of Texas pertaining to Crime Stoppers records and pertaining to *Brady* material.**

8. **The description of the items sought by the motion is unreasonably broad and vague and the words "if any" reflect the uncertainty that the records sought even exist.**

9. **The Crime Stoppers program does not keep files on persons by name, and has no duty to seek or ascertain the identity of persons who provide information to the person receiving calls on behalf of the Crime Stoppers organization. See *People v. Callen*, 194 Cal. App.3d 558, 239 Cal. Rpt. 584 (Cal. App. 1987).**

10. **The Circuit Courts of the United States have repeatedly and consistently protected the records of various Crime Stoppers organizations from**

[1] See Thomas v. State, 837 837 S.W.2d 106 (Tex. Crim. App. 1992).

compelled disclosure to defendants, as indicated by their decisions. See *United States v. Zamora*, 784 F.2d. 1025 (10th Cir. 1986); *United States v. Domina*, 784 F.2d 1361 (9th Cir. 1986); *United States v. Debango*, 780 F.2d 81 (D.C. Cir. 1986); *United States v. Klein*, 850 F.2d 404 (8th Cir. 1988), etc.

11. **The appellate courts of numerous other states have also repeatedly and consistently protected the records of various Crime Stoppers programs from compelled disclosure to defendants as is indicated by their decisions. See: *State v. Babella*, 772 P.2d 875 (Mont. 1989); *State v. Pink*, 696 P.2d 358 (Kan. 1985); *Ballentine v. State*, 707 P.2d 922 (Alaska App. 1985); *Hinson v. State*, 595 So.2d 301 (Fla. App. 1992); *Faulkner v. State*, 534 A.2d 1380 (Spec. App. Md. 1987); *People v. Callen*, 194 Cal. App.3d 558 (1987); *Seltzer v. State*, 489 N.E.2d 939 (Ind. 1986); *State v. Gibson*, 505 So.2d 237 (La. App. 1987); *State v. Hopper*, 695 S.W.2d 530 (Tenn. Cr. App. 1985); etc.**

12. **To fail to deny item 10 of the motion for discovery herein would be to violate the trust of all good citizens who have chosen the Crime Stoppers organization as a vehicle for being able to safely and efficiently communicate and report criminal acts anonymously without exposing themselves to dangerous retaliation, and would have a chilling effect on the Crime Stoppers program which is one of the few successful citizen's programs that gives hope to law-abiding citizens that there is a possibility of winning the war against crime in our homes, schools, businesses, and communities.**

WHEREFORE, above premises considered, it is hereby requested that the said item 10 of Defendant's motion for discovery be in all things DENIED, and, in the alternative, that the defendant be required to comply with Section 414.008 of the *Texas Government Code* before Movant is required to produce *in camera* to the Honorable Judge any of the records, reports, or items related to a communication made to Crime Stoppers or its agent.

Respectfully requested,

_____

Terra Bay
Assistant District Attorney
974 E. Harrison Street
Brownsville, TX 78520
State Bar No. _____
Telephone: (956) 544-0849
Fax: (956) 544-0869

CERTIFICATE OF SERVICE

The undersigned certifies by signature below that a copy of the foregoing Motion was served upon all attorneys of record in this cause, on the 10th day of January, 2002, by:

- **[ ] Telecopier**
- **[ ] United States Mail**
- **[ ] Certified Mail, Return Receipt Requested**
- **[ ] Private Mail Carrier**
- **[ ] Hand-Delivery**

_____
(Name)

State v. Trevino, No. WD-83-95, Court of Appeals of Ohio, Wood County, Slip Opinion (April 13, 1984)

Probable cause was established for the issuance of a search warrant. The affidavit in support thereof, set forth the information that was obtained through an anonymous call to a Crime Stoppers program. The informant's previous reliability was verified through the records of the program, and the information given resulted from the personal observations of the informant, and certain details had been confirmed through police investigation.

The defendant's drug convictions were upheld, and the court held that probable cause was established under the totality of the circumstances analysis and even under the more restrictive two-prong test.

The credibility of the anonymous informant was shown by his two prior identification numbers given him by Wood County Crime Stoppers which involved cases where arrests and convictions were obtained.

CREDIBILITY OF ANONYMOUS INFORMANT SHOWN BY HIS PRIOR CRIME STOPPER TIPS THAT HAD PROVEN TRUE

State v. Hampton, No. C-84-0084, Court of Appeals of Ohio, Hamilton County, Slip Opinion (February 6, 1985)

Aggravated robbery and involuntary manslaughter convictions affirmed.

Jewelry taken in the robbery had been left with co-defendant's girlfriend. The girlfriend took the jewelry to her mother the following day. Her mother gave it to Bessie Hoskins, an ordained minister at the Church of the Living God. The minister in turned called Crime Stoppers and delivered the jewelry to the police.

STOLEN PROPERTY AND EVIDENCE TURNED IN TO CRIME STOPPERS

State v. Barnes, 495 N.E. 2d 922 (Ohio 1986)

On June 1, 1983, an anonymous telephone call to Toledo Crime Stoppers led to the solution of a May 30, 1983, murder by telling where evidence of the crime could be found. Defendant confessed when evidence found in an alley could be traced to the defendant. The defendant received the death penalty in this aggravated murder case.

On appeal, Barnes, the defendant asserted that his right to confront witnesses was violated by the trial court allowing Crime Stoppers Detective Marx to testify that an anonymous informant told him where evidence of bloody socks, belonging to defendant Barnes, could be found. The appellate court rejected this argument because (1) there was no objection to this testimony at trial and (2) the defendant had previously admitted to Detective Marx that he owned the socks and this admission "completely negated any prejudicial effect that Marx's testimony that the informant stated the socks belonged to the appellant might have had."

ANONYMOUS TIP LED TO FINDING EVIDENCE USED TO CONFRONT SUSPECT AND SECURE CONFESSION

CONFRONTATION OF WITNESSES NOT VIOLATED BY CRIME STOPPERS

State v. Wilborn, Court of Appeals of Ohio, Montgomery County, Slip Opinion (August 7, 1986)

Defendant's life sentence murder conviction was affirmed on appeal. In this case, the Dayton Police did an excellent job in following up a Crime Stoppers tip by corroborating the tip in great detail during their investigation to solve the murder of Anthony Brandon. The court ruled that the police, under the *totality of the circumstances*, had probable cause to arrest Wilborn without a warrant. The officers had sufficient information derived from personal knowledge or a reasonably trustworthy source to warrant a prudent man in believing that a felony had been committed by the accused.

> "in the present case, the basic information about the murder was provided by an unbiased citizen, Linda Ward, of Crime Stoppers, who later testified at the trial, and her detailed facts about the alleged killing were shown, upon further investigation by the police officers, to be unusually pointed and accurate."

WARRANTLESS ARREST ON CORROBORATED CRIME STOPPERS TIP IS VALID

State v. Esparza, Court of Appeals of Ohio, Lucas County, Slip Opinion (August 26 1986)

Gregory Esparza appealed his death penalty conviction for the February 12, 1983, murder of Melanie Gershultz. Upon appeal, the conviction and death penalty were affirmed.

Defendant argued that the trial court erred in granting the prosecutor's motion in limine which precluded the defendant from making any reference to a Crime Stoppers call without first showing the judge, outside the presence of the jury, that the material was admissible. The appeals court found no error because (1) the defendant made no attempt to prove admissibility and (2) the content of the Crime Stoppers tip, although legally usable to secure a warrant, was inadmissible at trial because it was hearsay and no exception the hearsay rule was shown. Regarding the tip:

> "In this case, the statements made during the calls were made by someone outside the business activity with no legal duty to report accurately. Therefore, the statements did not qualify for the Evidence Rule 803(6) exception and no showing has been made that they qualify under any other hearsay exception."

Defendant's argument that he was denied effective assistance of counsel for failure to use the Crime Stoppers call was rejected in light of the above evidentiary ruling.

CRIME STOPPERS TIP INADMISSIBLE AT TRIAL BECAUSE HEARSAY

NO INEFFECTIVE ASSISTANCE OF COUNSEL FOR DEFENSE ATTORNEY NOT USING CRIME STOPPERS INFORMATION

State v. Reasoner, No. 87AP-165, Court of Appeals of Ohio, Franklin County, Slip Opinion (September 22, 1987)

The "defendant, a white man, shot and killed a fourteen-year-old black with a shotgun from an automobile in which defendant was riding at the time the victim was riding his bicycle along Fifth Avenue in Columbus, Ohio." His conviction for aggravated murder was upheld in this appeal.

Upon appeal the defendant attacked the credibility of one of the state's witnesses who helped establish the defendant's intent to commit a racial killing. Here, the appellate court stated:

> "The credibility of the state's witness merely described the statement as he remembered it, if he is to be believed. The fact that the state's witness received payment from Crime Solvers for the evidence that he provided does not make his statement insufficient."

PAYMENT OF CRIME SOLVERS REWARD TO STATE'S WITNESS DOES NOT RENDER HIS TESTIMONY INADMISSIBLE

State v. O'Neill, No. 53441, Court of Appeals of Ohio, Cuyahoga County, Slip Opinion (February 25, 1988)

Defendant's conviction for conspiracy to commit aggravated murder is affirmed upon appeal. O'Neill, with the help of Cleveland Police Officer Walter Sheahan, plotted to kill O'Neill's former garage employee who allegedly stole monies from O'Neill.

Another would-be conspirator, John Lester Dragon,

> "testified he was uncomfortable with killing someone and, on January 22, 1986, he telephoned Crime Stoppers, a crime prevention program run by the Cleveland Police Department. Without revealing his name, Dragon outlined the plan to kill Butterfield."

"On January 27, 1986, Dragon again called Crime Stoppers, however, this time he identified himself." Dragon eventually gave police a written statement, led police to evidence, assisted with tape recordings, and testified in court.

O'Neill's sole claim of error was insufficiency of evidence. The appellate court disagreed. There were no real Crime Stoppers issues in this case.

(See OH-08.)

MURDER CONSPIRATOR'S CHANGE OF HEART AND CALL TO CRIME STOPPERS PREVENTS CRIME AND RESULTS IN CONVICTIONS

State v. Sheahan, No. 53439, Court of Appeals of Ohio, Cuyahoga County, Slip Opinion (March 17, 1988)

Defendant Walter Sheahan was found guilty of attempted felonious assault, possession of criminal tools and possession of explosives. Sheahan, on appeal, claimed ineffective assistance of counsel because he believed his attorney should have raised the issue of entrapment and the defense of being a peace officer in possession of explosives.

The appellate court found that Sheahan, who was reported to Crime Stoppers, would have to remain a convicted criminal. The court did not consider Sheahan, an 18-year veteran Cleveland police officer to be anything other than an "expert in the area of criminal activity." As for the explosives, the court said "the intended use of the blasting caps ... was not lawful," so the police officer exception would not apply.

NO ENTRAPMENT WHERE 18-YEAR VETERAN POLICE OFFICER WAS CONSPIRATOR

CALL TO CRIME STOPPERS PREVENTS MURDER

State v. Horn, Court of Appeals of Ohio, Slip Opinion (1988)

William Trent Horn's convictions for the aggravated robberies of a Burger King and a McDonald's restaurant were affirmed upon appeal. A call to Crime Stoppers had identified Horn and Lovell Hawkins as the robbers.

(NOTE: This case can be found at 1988 WL 121284.)

TIP SOLVES ARMED ROBBERIES

State v. Francis, Court of Appeals of Ohio, Slip Opinion (1988)

Defendant's conviction for aggravated murder was confirmed upon appeal. The defendant's companions who were with him during an argument over "bad drugs," told Cleveland Police that Francis shot and killed Clinton Harris. A Crime Stoppers tip had led police to investigate the defendant's associates who implicated him.

(NOTE: This case can be found at 1988 WL 136015.)

TIP SOLVES MURDER

State v. Rodriquez, No. WD-88-72, Court of Appeals of Ohio, Slip Opinion (August 25, 1989)

Not even the 'good-faith exception' to the Exclusionary Rule could save this case upon appeal. Sgt. Thomas Brokamp of the Bowling Green Police Department obtained a search warrant to search for drugs after having received a Crime Stoppers tip earlier that day.

The appellate court stated:

> "Clearly, the affidavit is nothing more than a bare-bones statement totally void of any facts. It contains what is simply the conclusion of an informant that appellant was holding one-half ounce of cocaine at his residence, with no statement as to the basis of the informant's knowledge. There is not indication whatsoever as to how the informant knew appellant was holding cocaine, no indication as to the time frame..., and no corroboration of the information through independent investigation by the police department. Finally, there is no indication as to who in the police department even spoke to the informant."

FAILURE TO CORROBORATE TIP

State v. Porter, No. 57830, Court of Appeals of Ohio, Cuyahoga County, Slip Opinion (January 4, 1990)

The defendant's probation for two counts of aggravated arson was revised upon appeal. The defendant had been fined $750, but given the opportunity to contribute $500 to Crime Stoppers. Because the statutory punishment was a fine of "not more than $250," the requirement of a suspended $750 fine and an actual payment of $500 to Crime Stoppers was deemed excessive.

PAYMENT TO CRIME STOPPERS IMPROPER

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. Wright, No. 58665, Court of Appeals of Ohio, Cuyahoga County, Slip Opinion (May 30, 1991)

Appellant George Wright was convicted of aggravated arson.

During the trial, the defendant presented testimony to the effect that the state's primary witness did not get along well with him, and that the witness "indicated that he was going to call Crime Stoppers...so that he could collect a two thousand dollar reward."

This allegation was rebutted by the Crime Stoppers police coordinator who testified that no reports were made to Crime Stoppers, and by the State's witness testifying that he had not contacted Crime Stoppers.

ALLEGATIONS THAT WITNESS WAS INFORMANT REBUTTED

State v. Stubblefield, No. C-890597, Court of Appeals of Ohio, Hamilton County, Slip Opinion (February 13, 1991)

Although the defendant's conviction in a homicide case was set aside because of ineffective assistance from his attorney, the appellate court did not find unfair prejudice arising from defense counsel's failure to object to the prosecutor's references to the Crime Stoppers program during closing argument.

REFERENCE TO CRIME STOPPERS IN JURY ARGUMENT

State v. Bowen, No. 5-90-45, Court of Appeals of Ohio, Hancock County, Slip Opinion (August 16, 1991)

Burn Scott Bowen's conviction for aggravated burglary was reversed because of a trial court error which denied him the opportunity to cross-examine a witness.

During the trial, the defendant attempted to show that the state's witness (Moore) testified against the defendant because Moore believed that the defendant had turned Moore and another person into the police through Crime Stoppers. The trial court then erred by allowing two prior statements of Moore to be allowed into evidence which could not have logically rebutted the defendant's charge of an improper motive or influence because they were statements made "long after Moore learned he had been turned in to Crime Stoppers..."

EVIDENCE TO REBUT CHARGE OF IMPROPER MOTIVE

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

State v. Swearingen, No. 60822, Court of Appeals of Ohio, Cuyahoga County, Slip Opinion (January 30, 1992)

A person in a hospital waiting room called police after seeing a male in the waiting room who matched a picture on a Crime Stoppers poster as being wanted for arson. Swearingen was arrested for rape (he had taken the victim to the hospital and was waiting for her!) and also charged with possession of a handgun while under indictment for the felony (arson).

SUSPECT ARRESTED AFTER WANTED POSTER

OHIO

STATE v. TURNER, Unpublished Decision (11-02-2001); STATE OF OHIO, Plaintiff-Appellee, v. VERNON TURNER, Defendant-Appellant, Case No. 2000-T-0074.

In *State v. Faris* (Mar. 24, 1994), Franklin App. No. 93APA08-1211, unreported, 1994 WL 97095, at 2, a detective testified that he had received an anonymous tip about a case after it had been the subject of a segment of the television program "Crime≥ ≤Stoppers≥." The detective testified that he received written documentation from "≤Crime≥ ≤Stoppers≥" and it indicated that the defendant was responsible. *Id.* The *Faris* court held that the fact that he received information from "≤Crime≥ ≤Stoppers" was admissible for foundation purposes, but the statement that the information he received indicated that the defendant was responsible for committing the crime should have been excluded pursuant to Evid.R. 403(A), because of the potential for misunderstanding by the jury. *Id.*

In the instant case, it would have been appropriate for Hiorns to testify that he spoke to Dascoulias at the start of his investigation. However, it was unnecessary for him to state that Dascoulias had identified appellant as a "significant drug dealer" in order to explain the course of his investigations in Warren. "Relevant evidence" is defined as "evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence." Evid.R. 401. Dascoulias' statement that appellant was a "significant drug dealer," does not make it any more or less probable that appellant sold crack cocaine to an informant on February 25 and 28, 1999. Further, that statement is of no specific probative value, while being significantly prejudicial to appellant. Therefore, we agree with appellant that the statement was improperly admitted into evidence.

However, "[w]here evidence has been improperly admitted in derogation of a criminal defendant's constitutional rights, the admission is harmless `beyond a reasonable doubt' if the remaining evidence alone comprises `overwhelming' proof of defendant's guilt." *State v. Williams* (1983), 6 Ohio St.3d 281, 290, citing *Harrington v. California* (1969), 395 U.S. 250, 254. See also, *Stargell, supra,* unreported, 1989 WL 357040, at 3. In this case, there was testimony that prior to both buys, the informant had paged appellant and spoken to him by phone; appellant had been present at both transactions; appellant had personally accepted $1,200 from the informant during the February 25 transaction and instructed

Thomas to give the informant the cocaine; and, although MET members could not positively identify appellant, they maintained audio surveillance of the first transaction and video and audio surveillance of the second transaction and were able to confirm that the money that they had provided for the buy had been used by the informant to purchase cocaine. We conclude that there was overwhelming proof of appellant's guilt and that Hiorns' testimony regarding Dascoulias' statement amounted to harmless error. Therefore, appellant's first and second assignments of error lack merit.

In his third assignment of error, appellant avers, without reference to the record, that testimony that appellant was a known drug dealer was inadmissible evidence of other crimes, wrongs, or acts to prove his character and show that he acted in conformity therewith. We disagree.

Police receive anonymous tip after a Crime Stoppers television program

Statement was improperly admitted into evidence

Testimony regarding Dascoulias' statement amounted to harmless error

Evidence of other crimes, wrongs, or acts to prove his character and show that he acted in conformity therewith was admissible

Information from "≤Crime≥ ≤Stoppers" was admissible for foundation purposes, but the statement that the information he received indicated that the defendant was responsible for committing the crime should have been excluded

STATE v. BLACK, Unpublished Decision (3-16-2001); STATE OF OHIO, Plaintiff-Appellee v. ANTONIO BLACK, Defendant-Appellant, C.A. Case No. 18226, T.C. Case No. 99-CR-1789.

Acting on a tip from Crime≥ ≤Stoppers, police interviewed Defendant, Antonio Black, on May 24, 1999. Defendant orally confessed three different times to three different police officers that he was the "bag man" in the Milano's robbery. He identified Michael Henry as the gunman. The following day, May 25, 1999, Defendant again orally confessed his participation in this crime.

Tip from Crime Stoppers leads police to arrest

STATE v. PRESTON, Unpublished Decision (2-9-2001); State of Ohio, Appellee v. Sherman Preston, Appellant, Court of Appeals No. L-00-1096, Trial Court No. CR-99-2093.

In April 1983, the police received a Crime≥ ≤Stopper tip that appellant was involved in this homicide. The detective testified that he took a photo array to the victim's nephew and, in just a few seconds, he identified appellant as the man with whom he saw his aunt leave. Appellant was interviewed, shown a picture of the victim and denied knowing her. The detective testified that he noticed that the soles of appellant's tennis shoes appeared to resemble the pattern observed at the crime scene. The detective testified that he told appellant this and asked appellant for the tennis shoes; appellant was given a brand new pair of tennis shoes in exchange for his. Appellant's shoes were submitted to both the Toledo police crime lab and the F.B.I. in Washington for comparison to the victim's picture identification card, pictures of the footprints from the ground surrounding the victim and a piece of rubber runner from the stairs in the duplex.

Crime Stoppers tip leads police to murder suspect

STATE v. RICHARD, Unpublished Decision (12-7-2000); STATE OF OHIO, Plaintiff-Appellee v. THOMAS RICHARD, Defendant-Appellant, No. 76796.

Det. Milligan testified that they set up surveillance at 8407 Wade Park and 8722 Beckman Road after receiving complaints from Crime≥ ≤Stoppers≥. The police were given information that two brothers, "Tom" and "Jeff" were selling drugs out of their mother's home on Wade Park Avenue. Descriptions of the two men were also given. During surveillance, they observed heavy pedestrian and vehicular traffic at the Wade Park address. With the aid of binoculars, they witnessed individuals visiting the residence engaging in hand-to-hand transactions in the front yard and porch area or coming and going from the house for a short period. The night before the search warrants were executed, shots were fired at the Wade Park address and several zone cars responded.

In the instant case, the affidavit in support of the search warrant was signed by Det. Ruffin and states that over the past month, several citizens' complaints and a ≤Crime≥ ≤Stoppers≥ complaint were received by the police department that "Tom Richards" or "Tom Richardson" and his brother "Jeff" were trafficking in drugs at 8407 Wade Park Avenue. The ≤crime≥ ≤stopper's report indicated that the house on 8722 Beckman Road was a "stash" house.

Crime Stoppers tip leads police to surveillance and arrest

STATE v. WOODSON, Unpublished Decision (11-17-2000); State of Ohio, Appellee v. Richard Woodson, Appellant, Court of Appeals No. L-99-1371, Trial Court No. CR-99-2007.

On June 22, 1999, appellant was indicted and charged with one count of aggravated robbery, in violation of R.C. 2911.01(A), with a firearm specification. The charges arose out of the May 4, 1998 aggravated robbery of MarTed's Bar in Toledo, Lucas County, Ohio. During that robbery, two masked men entered the bar carrying sawed-off shot guns. They ordered the patrons and bartender to lie down, then one suspect cleaned out the cash register while the other suspect kept watch over the victims. Subsequently, a Crime≥ ≤Stopper tip led Detective Robert Schroeder of the Toledo Police Department to interview the girlfriend of Craig Ramsey, a suspect in the robbery. Ramsey's girlfriend revealed that Ramsey had committed the robbery and had recruited a juvenile named Richard who lived on Sanford Street, to act as backup. An investigation led officers to appellant. Although officers were unable to physically locate appellant, they did leave word with his grandmother that they wanted to talk to him. Thereafter, appellant contacted Detective Schroeder and arranged a time to come to the police station to talk to the detective.

After the initial confession, Detective Schroeder left the interview room for approximately ten minutes. During this time, the video recorder was activated and appellant's conversation with his mother was recorded. This tape shows a distraught appellant unable to gain control of himself during the time that Detective Schroeder was out of the room. When Detective Schroeder returned with Detective Riddle, appellant continued to cry for several minutes. Ultimately, appellant gained control of himself. The detectives then read him his Miranda rights. The videotape of that interview reveals that appellant appeared to understand those rights and knowingly, intelligently and voluntarily waived them. He then proceeded to tell the detectives about the robbery and his role in it. In our view, the totality of the circumstances surrounding this interrogation supports the finding that appellant knowingly and voluntarily waived his Miranda rights before confessing to the robbery. Accordingly, the trial court did not err in denying appellant's motion to suppress and appellant's assignments of error are not well-taken.

On consideration whereof, the court finds that appellant was not prejudiced or prevented from having a fair trial and the judgment of the Lucas County Court of Common Pleas is affirmed. Court costs of this appeal are assessed to appellant.

Crime Stoppers tip leads police to arrest

Totality of the circumstances surrounding this interrogation supports the finding that appellant knowingly and voluntarily waived his Miranda rights

STATE v. RICHARD, Unpublished Decision (9-7-2000); STATE OF OHIO Plaintiff-Appellee v. JEFFERY RICHARD Defendant-Appellant, No. 76797.

See previous case

STATE v. FAHRINGER, Unpublished Decision (5-11-2000); STATE OF OHIO, PLAINTIFF-APPELLEE v. CHRISTOPHER C. FAHRINGER, DEFENDANT-APPELLANT, No. 4-99-14.

Approximately three to four weeks later, officers received a "crime≥ ≤stoppers" tip that Appellant and the two co-defendants were responsible for the incident. Subsequently, on March 8, 1999, Appellant was indicted on one count each of conspiracy to commit kidnapping in violation of R.C. 2923.01, a second degree felony; complicity in the commission of kidnapping in violation of 2923.03, a first degree felony; complicity in the commission of abduction in violation of 2923.03, a third degree felony; and complicity in the commission of assault in violation of 2923.03, a first degree misdemeanor.

Crime Stoppers tip leads police to suspect

STATE v. BAKER, 137 Ohio App.3d 628 (2000), 739 N.E.2d 819

Lori went to pick up Vicki at work. Vicki testified that Lori was upset and "mad." At 4:00 p.m., Doan came to the Baker home, borrowed Lori's Honda, and loaned her the Mustang in exchange. No buyer ever came to look at the Mustang. Doan looked "awful funny" and was "real pale and quiet." At about 5:30 p.m., Lori and Vicki went to Carla's home in the Mustang. On the driver's seat was a damp sheet which Lori tossed in the back. The driver's seat was "damp." Lori again asked

Carla if she had seen Carrie. When Carla told her she had not, Lori told her about Doan coming in the middle of the night smeared with blood, appellant and Doan leaving with garbage bags and a gun, appellant coming back home with blood on him, and Lori washing his clothes. Lori, Carla, and Vicki then "parted Carrie out." Carla testified that Lori was still upset and nervous. Vicki testified that Lori was "worried, very worried." As Lori went around the Mustang to leave, she noticed "a hunk of something that was bloody," "like a hunk of meat" adjacent to the driver's door. During the weekend of August 31 — September 1, 1996, Carla placed a call to Crime≥ ≤Stoppers relating what Lori had told her.

Tip called into Crime Stoppers regarding murder

STATE v. MADRIGAL, 87 Ohio St.3d 378 (2000), 721 N.E.2d 52

Also on Monday, Corbett contacted his father, who was employed at the Lucas County Sheriffs. Department, and told him that he thought the police were looking for the wrong car, and indicated he needed to get a picture of the car to show police. His father went to the local Buick dealership and got some books of older model cars and brought them to Corbett and Kerekes to look through. They found a picture that resembled the car. they saw at the KFC, and turned it over to police. Police received a crime≥-≤stoppers tip that a Jamie Madrigal had purchased such a car and that the car they were looking for was at a house on Alldays Street. Detective Robert Leitner, the chief detective investigating the case, went out to look at the vehicle.

Police received a Crime Stoppers tips regarding murder

STATE v. BRADFORD, Unpublished Decision (12-2-1999); State of Ohio, Plaintiff-Appellee, v. Troy J. Bradford, Defendant-Appellant, No. 98AP-1546.

The charges arise out of five separate burglary incidents which the police believe were connected to a series of thirteen related incidents. The crimes were similar in that the perpetrator entered the homes of older female residents on the south side of Columbus and demanded money. Most of the victims had little or no cash available and defendant threatened and assaulted them and damaged their property. Appellant became a suspect as the result of an anonymous tip received through Crime≥ ≤Stoppers. (Tr. 248.) When appellant discovered he was a suspect, he turned himself in to the police and, at that time, his photo was shown on television.

Appellant was identified as the perpetrator by five victims through a photo array. (Tr. 64, 90, 119, 152-154, 224.)

Anonymous tip to Crime Stoppers leads police to arrest

STATE v. FEARS, 86 Ohio St.3d 329 (1999), 715 N.E.2d 136

On April 13, 1997, police arrested appellant after receiving a tip from Crime≥ ≤Stoppers as to appellant's whereabouts. Appellant was charged in a twelve-count indictment with four counts of aggravated murder, one count of aggravated burglary, three counts of aggravated robbery, and four counts of kidnapping. The aggravated murder counts charged that appellant was the principal offender and that he murdered Antwuan Gilliam with prior calculation and design. Gun specifications were attached to all charges.

Anonymous tip to Crime Stoppers leads police to arrest

STATE v. HAIRSTON, Unpublished Decision (6-11-1999); State of Ohio, Plaintiff-Appellee v. Donald R. Hairston, Jr. Defendant-Appellant, C.A. CASE NO. 17218.

Hairston became a suspect in the Quick Mart robbery after his friend, Michael Blair, was identified as a suspect in the robbery by two men of an A&K convenience store on November 5, 1997. Detective Ray Martin, who was investigating the A&K robbery on behalf of the Dayton Police Department and who had identified Blair as a suspect, prepared a photo array of possible additional suspects in the A&K robbery. The array included a photograph of Hairston because of his friendship with Blair. Detective Martin shared the photo array with Detective Lawrence Atchison of the Montgomery County Sheriff's Office, who was investigating the Quick Mart robbery. On November 12, 1997, Blair's picture appeared in a Crime≥ ≤Stopper photo array in the Dayton Daily News. Alcharbaji saw the picture and told Detective Atchison that Blair's nose resembled the nose of the masked man who had participated in the Quick Mart robbery. Detective Atchison subsequently showed Detective Martin's photo array to Alcharbaji, stating that the photo array "may contain the other suspect" in the A&K robbery. Alcharbaji immediately identified Hairston as the unmasked man who had robbed him.

Crime Stoppers photo lead police to arrest

STATE v. MONTGOMERY, Unpublished Decision (2-5-1999); State of Ohio, Appellee v. William T. Montgomery, Appellant, Court of Appeals No. L-98-1026, Trial Court No. CR86-5450

As stated above, on March 8, 1986 at approximately 7:30 a.m., Tincher's body was discovered in her car at the corner of Wenz and Angola. Soon thereafter, Ogle was listed as missing. The following day, however, Ogle's car was discovered behind an abandoned house at 1031 Norwood. Thereafter, on March 10, 1986, Crime≥ ≤Stoppers≥ received a telephone call from a Michael Clark who was at that time incarcerated in the Lucas County Jail. Upon interviewing Clark, officers obtained the name of Glover Heard. Officers located Heard and from Heard they obtained the name of appellant. Officers then gained permission from appellant's mother to search her home, where appellant also lived. That search revealed a black leather jacket with a hood and the manual to the Bursa semi-automatic handgun. Subsequently, on March 12, 1986, officers went to Randolph Randleman's home in an attempt to locate appellant. At approximately 12:00 noon, appellant arrived that appellant be executed. On direct appeal to this court appellant raised sixteen assignments of error, all of which we found to be without merit. See State v. Montgomery (Aug. 12, 1988), Lucas App. No. L-86-395, unreported. Thereafter; appellant appealed his convictions and sentence to the Supreme Court of Ohio, where he raised thirty-two propositions of law. Upon consideration, that court affirmed appellant's convictions and death sentence. See State v. Montgomery (1991), 61 Ohio St.3d 410, certiorari denied (1992), 502 U.S. 1111. Subsequently, appellant filed an application for delayed reconsideration in this court in which he asserted that his original appellate counsel was ineffective for failing to raise twenty-nine additional assignments of error in his direct appeal. Upon review, we denied the application finding the matters raised to be res judicata or improperly raised before this court. See State v. Montgomery (Mar. 3, 1993), Lucas App. No. L-86-395, unreported.

In his sixty-first claim for relief, appellant asserted that the state withheld information in its possession regarding how it obtained the alleged confession of co-defendant Glover Heard. Appellant argues that the state presented evidence at trial that it first suspected appellant in the murders when it received a call to ≤Crime≥ ≤Stoppers≥ on March 10, 1986 from an inmate in the Lucas County Jail, Michael Clark, who revealed that Heard had told him that he had seen two white girls murdered. Appellant then contends that at trial the state represented that based on this information, the police questioned Heard, who confessed to the crimes and implicated appellant. Appellant states that Exhibit TT reveals that in reality, Heard was not in the Lucas County Jail on March 10, 1986, that Clark told police he

spoke with Heard by telephone, but that jail records reveal the telephones were not turned on at the time when Clark stated they were. Appellant asserts that had this information been revealed to the defense, it would have completely destroyed the credibility of Heard and Clark. Our review of the record fails to reveal any testimony presented by the state that Heard was ever in jail with Clark. Rather, the record reveals testimony that on March 10, 1986, as the result of a call to ≤Crime≥ ≤Stoppers≥, police officers interviewed Clark in the Lucas County Jail and learned that Glover Heard had bragged about seeing two white girls killed. As a result of that interview, officers contacted Glover Heard and through him obtained the name of appellant. Appellant asserts that Exhibit TT establishes that this story is not credible. Exhibit TT contains the three police reports regarding Michael Clark. Exhibit TT, at 1149, reads in relevant part:

> "Michael Clark had conversation by phone with GLOVER HEARD on 3-8-86 at approximately 0900 hrs. while he was in the LCCC. He was told by Heard that he saw two girls age 19 & 20, shot. He did not go into detail with him.
>
> "Calrk [sic] attempted to have the information relayed to us and told several Lucas County Deputies at the LCCC but we were never contacted. Mr. Clark finally called on 3-10-86 at the ≤Crime≥ ≤Stopper phone and gave the information to Sgt. Biegala who assigned Det. Ray Sifuentes the interview of Clark. See Det. R. Sifuentes Supplemental Report regarding his interview.
>
> "The information provided by Michael Clark was instrumental in breaking the case and resulted in the arrest of William Montgomery and Glover Heard. He stated that he will testify and be available when needed."

As is clear from these reports,. nothing in the allegedly withheld evidence contradicts the testimony at trial. Moreover, the evidence only indicates that there was no record of whether or not the telephone was turned on. It does not establish that the phone was not turned on. As such, we cannot say that there is a reasonable probability that the result of the trial would have been different had this evidence been disclosed,the lower court did not err in dismissing the sixty-first claim for relief.

Nothing in the allegedly withheld evidence contradicts the testimony at trial

No reasonable probability that the result of the trial would have been different had this evidence been disclosed,

STATE v. TOLBERT, 116 Ohio App.3d 86 (1996), 686 N.E.2d 1375

The first witness at the motion to suppress was Detective Marvin Cross. He stated that one of the major functions of the R.O.P.E. Unit is to pursue persons wanted on any outstanding capias. On October 28, 1994, Cross received a "Crime≥ ≤Stoppers≥" tip that defendant could be found at his girlfriend's apartment, located at 1015 Linn Ave., Apt. 5. Afterwards, Cross ran the defendant's name in the computer and found that various traffic warrants from the city of Cleveland and Cuyahoga County had been issued for his arrest. Having verified that the warrants were active, Cross obtained a photo, physical description, and criminal history of defendant from the file. Another tip from ≤Crime≥ ≤Stoppers stated that the name of defendant's girlfriend was India. Arriving at the location on Linn Dr., the detectives learned that India lived in apartment 6 instead of apartment 5. When Cross knocked at the door of 6, India answered. Cross said that he identified himself as "Marvin the policeman." The officer then stated as follows:

> "The door was open and I could see him laying [*sic*] on the couch. She was like, `Do you have a warrant?' We just went straight on in. She started trying to walk back toward the couch where he was laying [*sic*] like to warn him. She was doing this like trying to block us. We just went on to the couch where he was.
>
> "* * *
>
> "After we got to the couch, Detective Kime and Detective Grooms had their guns out and was [*sic*] pointing at him. I went and leaned on him because the way he was laying [*sic*], he had a blanket over him and he had one arm was like out so the Detective Kime grabbed the one arm. We identified ourselves as police. He was half asleep. I leaned on him on the couch so that if he had a gun, we didn't know what he had, he couldn't pull it up, and then I told him hey, to stand still, and I'll take his arm out from under the blanket, and with Kime holding the one arm, I pulled his one arm out from under the cover slowly and then I pulled the cover back. When I pulled the cover back, there was a big bag with a bunch of rocks in it."

The police then found 11.44 grams of marijuana, two pagers, and $460 in cash on defendant. The rocks were later determined to be ninety-four rocks of crack cocaine. On cross-examination, Cross repeated that he could see defendant from the doorway and that India Perry did not consent to their entry.

In this assignment, defendant argues that his motion to suppress should have been granted because the entry into the apartment and subsequent arrest of defendant violated his rights under the Fourth Amendment. Defendant contends that (1) to enter his girlfriend's apartment the police were required to have a search warrant, and (2) absent a search warrant, the police conducted an illegal search when they recovered a bag containing the rocks of crack cocaine. These arguments are meritless.

Fourth Amendment rights not violated

STATE v. GUMM, 73 Ohio St.3d 413 (1995), 653 N.E.2d 253

Several weeks later Betty Gumm, a friend of the Raines family and defendant's sister through adoption, learned that her brother Darryl had been in the neighborhood on the day of Aaron's murder. Betty knew that her brother was acquainted with Aaron, and was familiar with the abandoned buildings where Aaron's body was found, having stripped copper out of them many times at night. Betty called the local "Crime≥ ≤Stoppers" number to report her information.

Tip from Crime Stoppers leads police to arrest

STATE v. JENKINS, 104 Ohio App.3d 265 (1995), 661 N.E.2d 806

In *United States v. Munoz-Guerra* (C.A.5, 1986), 788 F.2d 295, the Mission, Texas, police department received an anonymous call to its "Crime≥ ≤Stoppers" telephone line. The caller stated that she had seen approximately three hundred pounds of marijuana, money and a white powder inside a briefcase, at a condominium, and gave the address. The caller gave the description of a pickup truck that was in the driveway and of the occupant, who she alleged was armed.

We find the reasoning in these authorities to be compelling and dispositive of the cause *sub judice.* A warrantless entry of a home by law enforcement authorities,

even based upon probable cause, cannot be justified by exigent circumstances of their own making.

A warrantless entry of a home by law enforcement authorities, even based upon probable cause, cannot be justified by exigent circumstances of their own making

STATE v. MISCH, 101 Ohio App.3d 640 (1995), 656 N.E.2d 381

This appeal comes to us from a judgment of conviction and imposition of sentence issued by the Lucas County Court of Common Pleas following the return of a jury verdict in which appellant was found guilty of aggravated murder and aggravated robbery. We affirm the convictions because the evidence was sufficient to support the verdicts and the verdicts were not inconsistent. In addition, our review indicates that the trial court did not commit prejudicial error.

On August 4, 1992, the beaten body of Vernon E. Huggins, a black male, was discovered by two area residents in a Toledo city park. As a result of a crime≥ ≤stopper call, the police obtained information linking appellant, Eric Misch, to the murder. On February 2, 1993, two police detectives went to appellant's home; there, the detectives read appellant his *Miranda* rights. Appellant, then sixteen years old, and his mother executed a written waiver of these rights. After appellant and his mother consented to the questioning of appellant without her being present, the detectives took appellant to the downtown police station. Upon first being questioned, appellant denied any knowledge of the murder. However, after detectives told appellant that two members of his gang had linked him to the murder, appellant admitted his involvement in the beating.

From a crime≥ ≤stopper call, the police obtained information linking appellant to the murder

Evidence was sufficient to support the verdicts

STATE v. GOULD, 95 Ohio App.3d 634 (1994), 643 N.E.2d 179

Agent Warren Capps of the Westshore Enforcement Bureau testified that he was investigating appellant as a result of information he had received from Cuyahoga County Crime≥ ≤Stoppers. Capps contacted an informant whose role was to

introduce him (the buyer) to appellant (the seller). The meeting which was arranged by the informant was to take place on June 26, 1992 at the Scottish Inn.

Information received through Crime Stoppers leads to arrest

STATE v. MONTES, 92 Ohio App.3d 539 (1993), 636 N.E.2d 378

Defendant-appellant Dewey Montes appeals his jury trial conviction for grand theft of a motor vehicle in violation of R.C. 2913.02. Following trial, appellant was sentenced to a term of imprisonment of twenty-four months and was ordered to pay costs. The trial court suspended execution of the sentence and placed the appellant on three years' probation conditioned upon payment of restitution in the amount of $6,500, payment of court costs within ninety days, and payment of a $5,000 fine or, in the alternative, payment of $2,500 to Crime≥ ≤Stoppers≥.

In his tenth assignment of error, appellant objects to the trial court's sentence. The trial court suspended a twenty-four-month term of imprisonment and placed the appellant on three years' probation conditioned upon: (1) payment of restitution in the amount of $6,500; (2) payment of court costs; and (3) payment of a $5,000 fine or a payment of $2,500 to ≤Crime≥ ≤Stoppers.

A trial court is vested with broad discretion in imposing a felony sentence, and this court will not reverse the sentence unless it is statutorily incorrect and the trial court abused its discretion by failing to consider the statutory sentencing factors. *State v. Kroner* (1988), 49 Ohio App.3d 133, 551 N.E.2d 212; *State v. Henry* (1987), 37 Ohio App.3d 3, 523 N.E.2d 877; *State v. Yontz* (1986), 33 Ohio App.3d 342, 515 N.E.2d 1012. The court presumably considers the statutory factors unless the record supports a contrary conclusion. *State v. Adams* (1988), 37 Ohio St.3d 295, 525 N.E.2d 1361.

Accordingly, appellant's tenth assignment of error is overruled.

Trial court is vested with broad discretion in imposing a felony sentence

STATE v. TAYLOR, 82 Ohio App.3d 434 (1992), 612 N.E.2d 728

In the present case, Sgt. Wilhelm related that the informant had personally seen, within the previous twenty-four hours, large amounts of cocaine being prepared for

distribution at the house listed in the warrant. Sgt. Wilhelm relied on Sgt. Maynes's assurance that the informant was reliable and had given accurate information in the past that had led to felony arrests. This affidavit had more substance than the "bare-bones" conclusory affidavit in *Rodriguez, supra,* relied on by Taylor. The *Rodriguez* affidavit merely stated that "the department" received a call from Crimestopper # 513, who said that Rodriguez had half an ounce of cocaine at his residence above Disalle Realty. The affidavit did not relate who received the tip, how the informant knew the information, or the time frame involved; in addition, there was no police corroboration of the information. The Wood County Court of Appeals invalidated the search warrant because probable cause to search was not established. That court further concluded that the *Leon* exception to the exclusionary rule was not applicable because the officers' reliance on the bare-bones affidavit that contained only conclusions, with no facts supporting them, was not reasonable.

Defendant-appellant Kevin Eugene Taylor appeals from his conviction and sentence, following a no-contest plea, on one count of attempted aggravated trafficking in drugs, in violation of R.C. 2923.02 and 2925.03(A)(6). Taylor contends that the trial court should have suppressed the results of the search of his person and his residence because there was no probable cause to issue the search warrant and because there were defects in the affidavit supporting Page 438 the warrant. We conclude that any defects in the affidavit were not material, the affidavit was sufficient to establish probable cause to search the house, and the warrantless search of Taylor was reasonable under the circumstances. Accordingly, we conclude that the trial court properly denied the motion to suppress.

Any defects in the affidavit were not material, the affidavit was sufficient to establish probable cause to search the house

Warrantless search of Taylor was reasonable under the circumstances

Trial court properly denied the motion to suppress

Biographical Sketch

JUDGE RICHARD W. CARTER (RET.)

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Judge Richard Carter served on the benches of the cities of Arlington, Richland Hills, and DeSoto, Texas, during his 25 years of criminal justice work. Along the way, he also served as Hunt County Attorney and Waco Police Legal Advisor.

He has always been active in professional organizations, having been elected by his peers as Chair of the *Texas Association of Police Attorneys*; Chair of the Legal Officers Section of the *International Association of Chiefs of Police*; and Chair of the Municipal Judges Section of the *State Bar of Texas*.

Judge Carter enjoys writing and lecturing. He has taught as an instructor at *Texas A&M University at Commerce*; *McLennan Community College*; and *Baylor University*. Among the books he has authored are: The Crime Stoppers Case Digest; Crime Stoppers Statutes with Commentaries; and Court Security for Judges, Bailiffs and Other Court Personnel.

Richard Carter has been very active in *Crime Stoppers* on the state, national, and international levels since 1981. He chaired the *Texas Crime Stoppers Advisory Council* for two two-year terms (1983-87) under Governors White and Clements; and as a member of the board and secretary of what is now *Crime Stoppers International, Inc.* 1982-86). He is the only "General Counsel" in the history of *Crime Stoppers International, Inc.*, and continues to serve in such capacity. He has lectured and spoken to over *Crime Stoppers* groups in four nations, and trained more than 80,000 *Crime Stoppers* participants since 1982. Judge Carter has been featured as a spokesperson for *Crime Stoppers* on CNN, NBC, CBS, and other television and radio stations and periodicals.

Since leaving the full-time bench, Judge Carter, in addition to his *Crime Stoppers* activities, maintains a small "unlisted" law practice, and serves as General Counsel to *Correctional Systems, Inc.* (California & Texas), and as Assistant General Counsel for the *Combined Law Enforcement Associations of Texas*.

In his spare time, approximately 53 minutes each day, he enjoys the company of his wife Brenda and their children ranging from age 3 ½ to 29.

Crime Stoppers programs make the promise of anonymity in a variety of worded statements. Examples of the promises are:

- You will remain anonymous.
- You do not have to disclose your identity.
- You may remain anonymous.
- You can remain anonymous.
- *Crime Stoppers* guarantees that you will remain anonymous.

The promise of anonymity is a part of the "contract" that is formed by the offer of a reward and the informant's acceptance of and performance of the contract. If the promise is made, it should be kept. The only exception is when the contract is modified by mutual consent of the parties to the contract, i.e., when the informant agrees to allow the identity to be disclosed. Although there has not been a *Crime Stoppers* case in which Crime Stoppers has been successfully sued for not keeping the promise of anonymity, there is a case in the State of Oregon where an informant in a non-*Crime Stoppers* case sued because her identity was revealed to the criminal defendant and his attorney. The informant lost the case in the trial court, but appealed.[1]

II. The Best Way To Preserve The Informant's Identity

If you do not know the identity of the person who calls *Crime Stoppers*, then you cannot reveal what you do not know. For this reason, most *Crime Stoppers* programs tell the caller at the very beginning of the telephone conversation: "Please do NOT tell me who you are, so that you can remain anonymous." Occasionally, however, the call will give his or her name, or other identifying information, in spite

[1] Keltner v. Washington County, 100 Or. App. 27, 784 P.2d 127 (Or.App. 1989).

of all efforts to dissuade the informant from doing so.

In the event that a *Crime Stoppers* caller blurts out the informant's identity, there are still some options available to protect the informant's identity from disclosure. The call-taker should not write down the informant's name or identifying information (other than the informant's *Code Number*, if one is given to the caller by *Crime Stoppers*) on the tip information sheet. Nor should there be a tape recording made of the informant's call. Generally, there is no duty whatsoever to write down, preserve, or ask for, the name of a caller. In at least two *Crime Stoppers* cases, defendants have attempted to strike down *Crime Stoppers* as being "unconstitutional" for its failure to ask for the identity of a caller; for its practice of telling the caller that the identity is not wanted; and for not taking efforts to track down and identify a caller who might be an exculpatory witness.[2] In both cases, *Crime Stoppers* survived the challenge with flying colors.

III. Protecting The Name Of The Informant Or The Identifying Information If You Do Not Have Such

If there are written documents, computer records, or even knowledge contained in the memory of a *Crime Stoppers* call taker's mind, it must be protected in every way possible from being disclosed. If not adequately protected, an informant's identity can be disclosed in several ways. The information may be disclosed *accidentally* by negligence if it falls into the wrong hands, or, it could be

[2] People v. Brown, 502 N.E.2d 850 (Ill. App. 2d Dist 1986); and People v. Callen, 194 Cal. App. 3d 558, 239 Cal. Rpt. 584 (Cal. App. 1987).

ordered to be disclosed by a court of law. There is really no reason why this should happen, if the guidelines of *Crime Stoppers* are followed.

For the good of all *Crime Stoppers* programs everywhere, it is strongly recommended that each and every effort to obtain the disclosure of an informant's identity and/or *Crime Stoppers* records be met with the greatest resistance possible. Never voluntarily disclose the identity of a *Crime Stoppers* informant. Always fight requests for disclosure. If *Crime Stoppers* programs give up their records (even records that do not contain identifying information), then it will soon become routine and commonplace for such requests. The voluminous requests can become overwhelming, time consuming, and *chilling* to would-be informants. If such requests become standard, then it is possible that all criminal defense attorneys will feel compelled to seek the information for fear of being accused of providing *ineffective* or *incompetent* legal representation.

IV. Special Legislation That Protects *Crime Stoppers* Information

A few very fortunate jurisdictions have special statutes which give added protection to *Crime Stoppers* records and information. The first such statute was enacted in New Mexico in 1978.[3] The statute provides that the records, reports, and files of the New Mexico State Crime Stoppers Commission shall not be subject to subpoena except by order of the Supreme Court of New Mexico. Additionally, there is a criminal penalty for the unlawful disclosure of confidential *Crime Stoppers* information.

The State of Texas went even further to protect the *Crime Stoppers*

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[3] Chapter 29, Article 12, *General Statutes of New Mexico*.

information in 1981. The Texas statutes[4] make it almost impossible to obtain the records not only of the Texas Crime Stoppers Advisory Council, but of all *Crime Stoppers* organizations operating within the State of Texas. Like New Mexico, Texas has a criminal penalty for unlawful disclosure.

Other states having similar legislation include Louisiana and Kentucky.

Court decisions in the states having such special statutes have interpreted the respective statutes favorably to *Crime Stoppers*.[5]

State and provincial legislative bodies should be encouraged to enact similar legislation in those jurisdictions not yet having such protective laws. The text of the Texas statute is cited as an example of model legislation and can be found in this publication.

There are, nevertheless, other legal means of protecting *Crime Stoppers* records and information if special legislation is lacking.

V. Application of "Open Records" Laws

There are two methods which have been successful in opposing attempts to obtain *Crime Stoppers* records when persons seeking information use an "Open Records" or "Public Information"-type statute. Most national, state, and provincial governments have such statutes which allow citizens to view and/or purchase copies of certain governmental records.[6]

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[4] Chapter 414, *Texas Government Code*.

[5] See State v. Gibson, 505 So.2d 237 (La.App.3d Cir. 1987); In Re Joe Cecil Smith, Jr., No. C-1699 (Tex. Sup. December 15, 1982); Meitzen v. Fort Bend County Crime Stoppers, Inc., No. C-4580 (Tex. Sup. December 4, 1985); Ex Parte: George Hendon, No. C-6624 (Tex. Sup. August 24, 1987).

[6] The United States has the *Freedom of Information Act* (5 U.S.C. Section 552). The State of Texas has a "Public Information Act" (Chapter 552 of the *Texas Government Code*). Ontario, Canada has the

One method is to take the position and argue that the tips are the property of the non-profit *Crime Stoppers* corporation, which is a private legal entity. In other words, the *Crime Stoppers* corporation is not a governmental agency, and the Open Records laws are not applicable. The Board of Directors of the *Crime Stoppers* corporation raises funds, offers rewards, solicits information, and receives the tips which it may or may not pass on to a law enforcement agency. The public cannot obtain the records of a private corporation such as *General Motors*, and it cannot, under an Open Records or Public Information statute, obtain the records of a private, non-profit, charitable corporation such as *Crime Stoppers*.

Many *Crime Stoppers* programs use rubber stamps or printed information on their Tip Sheets and records to reflect that the documents and tips belong to the corporation and are not to be disclosed or disseminated.[7]

The State of Arizona enacted a statute to protect *Crime Stoppers*-type records from "Open Records" act requests. The 1990 statute[8] reads:

> "A record of a communication between a person submitting a report of criminal activity to a silent witness or *Crime Stopper* program administered by a police department, sheriff's department, or county attorney's office and the person who accepted the report on behalf of the *Silent Witness* program is not a public record."

Another way to oppose "Open Records" requests, if the above method is unsuccessful, or if the *Crime Stoppers* tip information has been co-mingled or

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Freedom of Information and Protection of Privacy Act, 1987, and the *Municipal Freedom of Information and Protection of Privacy Act, 1989*.

[7] In Texas, one rubber stamp often used reads: "CONFIDENTIAL: Property of *Crime Stoppers of* _____, *Inc.*. Unauthorized copying, use, or dissemination punishable by law. *Texas Government Code*, Sect. 414.09."

[8] *Arizona Revised Statutes*, Title 12, Chapter 13, Article 9.

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the necessity for disclosure of the name of an informant. Those factors are where the informer:

- Participated in the offense
- Was present at the time of the offense or arrest, or
  Was otherwise shown to be a *material witness* to the transaction as to whether the defendant knowingly committed the act as charged.

It is well-settled law that an accused who seeks disclosure of the identity of an anonymous or confidential informer has the burden of showing that circumstances exist which justifies the invocation of an exception to the privilege of non-disclosure. In addition to showing that the informant was a participant in or eyewitness to the criminal act with which the defendant is charged, that the nature of the crime is such that the informant's testimony will be useful in formulating a defense, and that the defendant does not know the identity of the informant, the defendant may be required to provide specific, concrete reasons for his need to know the identity of the informant. The defendant may also be required to show that he intends to call the informant as a witness and that he has tried and has been unable, to locate the informant.

Even where the defendant has met the *preliminary* burden of proof in establishing his need for the disclosure of the identity of an informant, the government can present compelling reasons for invoking the privilege of nondisclosure. While this may put the prosecutor in the position of having to drop the case, it might also result in simply balancing the factors in favor of the prosecution and against the defendant in his request for disclosure. The "balancing test" weighs the public interest in protecting the free flow of information against the

individual's right to prepare his defense. Whether a proper balance renders nondisclosure erroneous must depend on the particular circumstances of the case, taking into consideration the crime charged, the possible defense[12], the possible significance of the informer's testimony, and other relevant factors. An excellent article, with examples of questions and evidence used in criminal cases dealing with the disclosure of an informer's identity can be found in the publication Proof of Facts, found in most law libraries.[13]

VII. *Crime Stoppers* Cases Upholding the Informer's Privilege

There have been several *Crime Stoppers* cases decided where appellate courts cited the informant's privilege as the legal authority for denying the defendant's motion to have the identity of the *Crime Stoppers* informant disclosed.

The most significant case is the United States Court of Appeals decision in *U.S. v. Zamora.*[14] The Tenth Circuit upheld the defendant's federal conviction for manufacture of a controlled substance and possession of methamphetamine with intention to distribute. The Court ruled that the Albuquerque Crime Stoppers informer's identity need not be revealed on the mere allegation by the defendant that the informant was more than a mere tipster as "there was no showing to identify how the informant was involved in the illegal activity."[15]

State appellate courts have also protected *Crime Stoppers* informants with the informer's privilege. In *State v. Parker*[16], the conviction of the defendant for

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[12] Defenses weighing more heavily towards meriting disclosure include: entrapment, duress, alibi, self-defense, and mistaken identity.
[13] "Criminal Law: Need for Disclosure of Identity of Informant", 33 POF2d 549 (1983).
[14] 784 F.2d 1025 (10th Cir. 1986).
[15] 784 F.2d 1025, at 1030.

need for disclosure, and this need must be one which overrides the government's interest. Mere speculation will not suffice." Quoting *State v. Sykes*, 683 P.2d 691, 695 (1983), the majority stated: "Allowing such a routine challenge as that presented by defendant would hamstring the effective operation of law enforcement agencies."

VIII. Use Of The "Hearsay" Objection

What may be the most surprising tactic that can possibly be used by a prosecuting attorney to keep out the contents of a *Crime Stoppers* informant's actual communication to the person who answers the *Crime Stoppers* telephone is the making of a "hearsay objection" during trial. For purposes of showing "probable cause", hearsay is always admissible. The hearsay is used in the affidavit presented to a judge when law enforcement officers are seeking a warrant, and may be gone into in a pre-trial suppression hearing (except for the identity of the informant, generally). Hearsay is not admissible in the trial of a case if a proper objection is timely made and no exception shown. Thus, a prosecutor can "have his cake, and eat it, too"! The prosecutor can use hearsay to secure the search warrant or an arrest warrant, but can object to the same as *hearsay* afterwards at trial.

Sometimes, a prosecutor will not object to a defendant's going into a discussion of the hearsay contents of a typical *Crime Stoppers* call. This is especially true if there is nothing to identify the informant; if the informant is already known to the defendant; and/or, if none of the hearsay is harmful to the government's case.

In *State v. Garcia*[20], the Arizona Supreme Court stated: "Here, defense counsel's conduct in extensively developing the subject information obtained from the 'Silent Witness' caller opened the door for the caller's exact statement to come in. He thus waived objection to the admissibility of the statement. There was no error in admitting the alleged hearsay statement."

At other times, the prosecutor will find it advantageous to go into the hearsay contents of a *Crime Stoppers* case during a trial, if the defense does not object.[21]

Cases of great importance are where the prosecutor objected to the defense going into the contents of a telephone tip during the trial (thus protecting the informant's identity and other information and records) because the contents are inadmissible hearsay. It is unfortunate that more prosecutors do not use this relatively simple technique more often.

In the *Zamora* case[22], the U.S. Court of Appeals found no abuse of the trial court's discretion in not permitting a defense inquiry into a conversation between the confidential informant and Detective Caswell of the Albuquerque Police Department. The United States Attorney objectd to the questions as calling for *hearsay*.

The basis of the hearsay objection in *Crime Stoppers* cases was best demonstrated in *State v. Esparza*[23]:

> "In this case, the statements made during the calls were made by someone outside the business activity with no

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[20] 133 Ariz. 522, 652 P.2d 1045 (Ariz. 1982).
[21] See: *State v. Cain*, 717 P.2d 15 (Mont. 1986); but the Court in *Cain* predicted "it is highly unlikely that in future cases defense counsel will fail to object to such testimony."
[22] 784 F.2d 1024, at 1030-31.
[23] Court of Appeals of Ohio, Sixth Appellate District, Lucas County, Slip Opinion, August 26, 1986.

judge would modify the court order to provide for an *in camera* (in the judge's chamber) examination of the records by the judge to determine whether the records should be disclosed. The *in camera* procedures may vary among jurisdictions[24]. The judge could deny disclosure or allow the defense to examine the records. A judge could also order a disclosure *vel non*, which means that the matter is discoverable but will not necessarily be admitted into evidence.

C. If the informant's identity is known to you (i.e., the informant is technically "confidential", not actually "anonymous"), you may consider asking the informant for his or her consent to disclose the identity. Great caution must be exercised. In no event should a *Crime Stoppers* informant's identity be disclosed unless the informant's "consent" is in writing and under oath. The consent form should include language which clearly indicates: The consent was made intelligently; the consent was given voluntarily; that there is no guarantee of the informant's safety after such disclosure; and that any reward the informant received was for *information*, not for any *testimony* or dependent upon the quality of or result of any testimony.

D. The ultimate choice is the one that hurts the most, but may be necessary. If all else fails, the prosecutor can file a motion to have the case dismissed rather than to proceed with a disclosure or a contempt of court

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[24] The State of Texas has a special statute that provides for *in camera* examinations in *Crime Stoppers* cases. See Section 414. of the *Texas Government Code*.

punishment. As painful as it may be to do so, it is more important that *Crime Stoppers* survives to assist in the solution of thousands of other cases, than to avoid the loss of one single case and break the promise of anonymity.[25]

[25] On January 25, 1989, Hunt County, Texas District Attorney F. Duncan Thomas refused to make a court-ordered disclosure of a *Crime Stoppers* informant. The hit-and-run homicide case against Elton Roger Brookshire, a Commerce, Texas Fire Department Captain, was then dismissed by the judge of the 196th District Court. Not too long afterwards, *justice* was obtained by a *Higher Authority* when Brookshire was killed in a one vehicle accident in Oklahoma in which no other human beings were injured.

(c) A person convicted of an offense under this section is not eligible for state employment during the five-year period following the date that the conviction becomes final.

individual's right to prepare his defense. Whether a proper balance renders nondisclosure erroneous must depend on the particular circumstances of the case, taking into consideration the crime charged, the possible defense[12], the possible significance of the informer's testimony, and other relevant factors. An excellent article, with examples of questions and evidence used in criminal cases dealing with the disclosure of an informer's identity can be found in the publication Proof of Facts, found in most law libraries.[13]

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