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POLICE OFFICER'S HANDBOOK

UNIFORM TRAFFIC TICKET
INSTEAD OF ARREST WARRANT
(State v. Prince)

INFORMER SEARCH WARRANT AFFIDAVIT
(State v. Williams)

CONTINUANCE OF TRAFFIC CASES?
(Brewer v. Highway Department)

FLEMING'S NOTEBOOK...Chapter 98:
Search by Private Citizen
Search by Police in Emergency
Protective Search for Weapons
Inventory Search of Auto
Recording of Conversation (by use of hidden recorder)
Drugs...Forcible Entry Without Search Warrant

Prepared under the direction of E. Fleming Mason Producer of Crime-to-Court ETV Law Enforcement Informational Programs, in cooperation with South Carolina Educational Television Network with funds provided through the South Carolina Criminal Justice Academy.

LAW ENFORCEMENT - ETV TRAINING PROGRAM

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By

Joseph C. Coleman
Deputy Attorney General
State of South Carolina

Endorsed by

South Carolina Governor, John C. West
South Carolina Law Enforcement Division
South Carolina Sheriffs' Association
South Carolina Enforcement Officers' Association
South Carolina Police Chiefs' Executive Association
South Carolina FBI National Academy Associates
South Carolina Southern Police Institute Associates

Rodney A. Peeples
Resident Judge-Elect
2nd Judicial Circuit

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FOREWORD

Much misunderstanding has developed from the decision of the South Carolina Supreme Court in a case called Brewer. It's subject was a trial in absence in magistrate's court on a date about which the defendant had not had specific notice. The case ...involving a charge of drunk driving...had been continued by the magistrate at the request of the defendant, but no time certain had been set for the trial thereafter. In this booklet, we shall look at that case and suggest a very simple solution to the problem it presents.

It is within the discretion of the magistrate or municipal judge as to when a case originally set for trial at a certain time, but continued for some reason, will be re-set for trial. The trial judge should always use good judgement and make every effort to be fair to the defendant and his attorney...but he should never lose sight of the fact that it is his duty to schedule cases for trial, and not that of the defendant.

Two new decisions of the South Carolina Supreme Court, filed in February 1974, deal with minimum time between arrest for a traffic offense and time for trial; whether or not issuance of an arrest warrant is necessary in drunk driving cases when a uniform traffic ticket is issued and served; and informer search warrant affidavits.

Rodney A. Peeples
Resident Judge-Elect
2nd Judicial Circuit

TIME BETWEEN ARREST AND TRIAL?

The defendant was arrested for drunk driving at 12:45 a.m. on Sunday, and was released on bond several hours later. He was served upon release with a uniform traffic ticket summoning him for trial at 3:00 p.m. on Monday.

At the appointed time, the defendant did not appear and was tried and convicted in his absence. On appeal, he claimed that the time between arrest and trial was so short that his right to a fair trial was violated.

The Supreme Court of South Carolina held that it was the duty of the defendant to get in touch with the court and request a continuance if he wanted one. He could not ignore the summons, then claim later that a trial date set two days after arrest violated his Constitutional rights. State v. Prince, SC, filed Feb. 11, 1974. The decision reads:

"In this respect, due process requires only 'ample notice and opportunity to answer and defend the charges.' State v. Brown, 178 SC 294, 182 SE 838, 841(1935). We have no applicable statute, and no rule of law prescribes a particular minimum or maximum time between arrest and trial. 22A C.J.S., Criminal Law, Sec.478, p.73(1961). In the absence of a request for a continuance and of any showing that defendant was deprived of a reasonable opportunity to defend against the charge, the court erred in holding that trial on the second day after defendant's arrest and release from incarceration per se deprived him of due process of law."

USE OF UNIFORM TRAFFIC TICKET INSTEAD OF WARRANT

Many magistrates and recorders require that arrest warrants be issued in all 'jail' cases, especially drunk driving cases...even though a uniform traffic ticket was issued and served. It now appears that while the issuance of an arrest warrant in such cases does not do any damage, it is not legally necessary. The South Carolina Supreme Court said in the Prince case:

"The defendant now raises the point for the first time that the magistrate's court was without jurisdiction of his person because no arrest warrant had been issued. This (argument) loses sight of Act No. 353 of 1971 which expressly provides that service of the uniform traffic summons 'shall vest all traffic courts with jurisdiction to hear and dispose of the charge for which such ticket was issued and served...'. See sec. 46-871, 1962 Code of Laws (Supp.1971)."

INFORMER SEARCH WARRANTS

In a recent search warrant issued for marijuana, the affidavit read:

"I (police officer) have confidential and reliable information that there is a large quantity of marijuana located in a large two-story unpainted house just off of Highway 34 in the Simpson Community of Fairfield County, and the house is located between that of one Willie Raines and one C. Less Spirwell, and the post office address thereof is Box 193, Route 2, Ridgeway, S.C."

The affidavit continued with information about how the informer knew the marijuana was there, and in what manner he came by such information.

Upon trial, the defendant argued that the affidavit was not sufficient upon which to base a search warrant.

WAS THE AFFIDAVIT SUFFICIENT?

The written affidavit was obviously not sufficient ...because it did not state how the officer knew the informer to be reliable. The conviction was not reversed, however, because there had been testimony at the trial without objection from the defendant's attorney that the officer had given sworn verbal testimony to the magistrate relating to how he knew the informer to be reliable. State v. Williams, SC, filed Feb. 11, 1974.

WHAT THE WILLIAMS CASE DID NOT SAY

The Williams case does not stand for the proposition that part of the information necessary to a lawful search warrant affidavit may be given verbally to the magistrate. Williams conviction was upheld because no objection to such testimony at the trial was made by the defendant's attorney. It's a pretty sure bet that defense attorneys in the future will

object to such testimony at trial.

The defective affidavit could have been made 'good' without question by adding just a few words:

"I have been told by an informer whom I believe to be reliable that there is a large quantity of marijuana located in a large, two-story, unpainted house just off of Highway 34 in the Simpson Community of Fairfield County, and the house is located between that of one Willie Raines and one C. Less Spirwell, and the post office address thereof is Box 193, Route 2, Ridgeway, South Carolina. I believe my informant is reliable because he gave me information on a previous occasion about the location of a quantity of marijuana that proved to be reliable, resulting in the seizure of such marijuana and the arrest of the person in whose possession it was found."

RULE AS TO INFORMER AFFIDAVITS

The rule as to valid informer affidavits has not changed. It still is:

(1) The officer must say why he believes his informant to be reliable. A mere statement to the effect that his information is from a 'reliable informer' is not enough. That is nothing more than a conclusion. The officer must state facts to support his conclusion.

(2) The affidavit must contain facts to support the informant's belief that the contraband or stolen goods are at the place to be searched. Did he see the things there? Did the person in charge of the place tell him they were there? If not, how does he know?

EXAMPLE

"Personally appeared before me John D. Sample, a law enforcement officer of this County, who, being duly sworn, says that he has been informed and does believe that a large quantity of marijuana is secreted in a residence house located at 2031 Whisnant Road in this County.

The affiant says that he has known such informer for more than a year, that the informer has given similar information to the affiant and his fellow officers on at least three occasions during that time, and that such information has proved to be reliable.

The affiant further states that the informer told him that the person in charge of such premises, a known dealer in unlawful drugs, told the informer two days ago that he had a large supply of marijuana available on the suspect premises for sale."

QUOTES BY JUDGE-ELECT

RODNEY A. PEEPLES

...CRIME-TO-COURT ETV PROGRAM

TAPED MARCH 18, 1974

SEARCH OF PERSON UNDER ARREST

"The thorough search of the (traffic) defendant was good policy... As (was) noted on a recent Crime-to-Court program, the courts have reaffirmed the right of an arresting officer to make a thorough search of a (traffic offender) under arrest, for both weapons and evidence."

DISPOSITION OF DRUNK DRIVER'S CAR

"When (such) a car is left on the shoulder of the road, even though it is locked, there is always the chance of it being stolen or stripped...or even having the gas siphoned, these days."

DRUNK DRIVING CHARGE,

LESSER OFFENSE

"Neither a judge nor a jury may make a finding of guilty of 'reckless driving' in a case charging 'drunk driving'. And neither may a plea of guilty to reckless driving be taken in a case charging drunk driving."

RECKLESS DRIVING,

SUBSTITUTING ANOTHER CHARGE

"If 'speeding' or some other charge is to be substituted for a 'reckless driving' charge, a new traffic ticket or arrest warrant must be issued charging the offense of 'speeding'. Otherwise, there would be nothing but a verbal charge of 'speeding'... and the State Supreme Court has said that a verbal charge is not sufficient to support a conviction on any criminal charge."

NOTICE OF DATE OF TRIAL

"When a traffic charge is disposed of on the date set on the uniform traffic ticket, either by trial, bond forfeiture, plea of guilty, or trial in absence, there is no need for additional notice. It is only when the case is not disposed of on that date, but, instead, at another time of which the defendant has not had notice, that Brewer trouble is encountered."

WHEN CONTINUANCE OF TRAFFIC

CHARGE IS REQUESTED

"I guess the main thing is that it's best not to leave things 'open' insofar as traffic charges are concerned. The best thing to do, I feel, is for magistrates and recorders to call the lawyer's office right then, or write a letter then, setting dates and times for drawing the jury and conducting the trial. In that way, there can be no question of lack of 'notice'."

SERVICE OF UNIFORM TRAFFIC TICKET

"That law (creating uniform traffic ticket) says that when a uniform traffic ticket is issued and served on the defendant, it is not necessary that an arrest warrant be issued."

SETTING TIME FOR TRIAL

"As the Court said in the Prince case, there is no statute setting a specific period of time required between arrest and trial. I think we can say, though, that setting trial on the same day as the arrest is not good practice for police, or traffic courts."

THE BREWER CASE

(Date and Time Certain)

Brewer was arrested on February 20, 1972, for DUI. He was served with a uniform traffic ticket summoning him to appear before a magistrate on February 22. The case was continued, with no specified date for trial being set, upon the request of an attorney. Approximately seven months later, on September 25, 1972, the magistrate tried the defendant in his absence. Notice of the September 25 date for trial had not been given to either the defendant or his attorney.

The Supreme Court held that the September 25 trial was void because of lack of notice that the trial would be held on that day. No reason is given as to why the case was continued for seven months before it was finally called for trial. Likewise, no reason was set forth as to why neither the defendant nor his attorney was notified of the September trial date.

COMMENT

If the magistrate, upon continuing the case at the request of the defendant's attorney, had continued it to a day and time certain, instead of indefinitely, he could have tried it on that day without fear of reversal.

Even though he continued the case indefinitely, the magistrate could have tried it lawfully on September 25, if he had given notice of that date to the defendant or his attorney. The weakness in this procedure, however, is that the attorney who demands jury trial and obtains an indefinite continuance might cease to represent the defendant at any time. In most cases, this is because the defendant fails to pay the attorney for his representation. When this happens, notice to the attorney is insufficient. Personal notice to the defendant of the date of trial must be given. This often proves difficult. It leaves the magistrate in the position of being unable to try the defendant or forfeit his bond until personal notice of

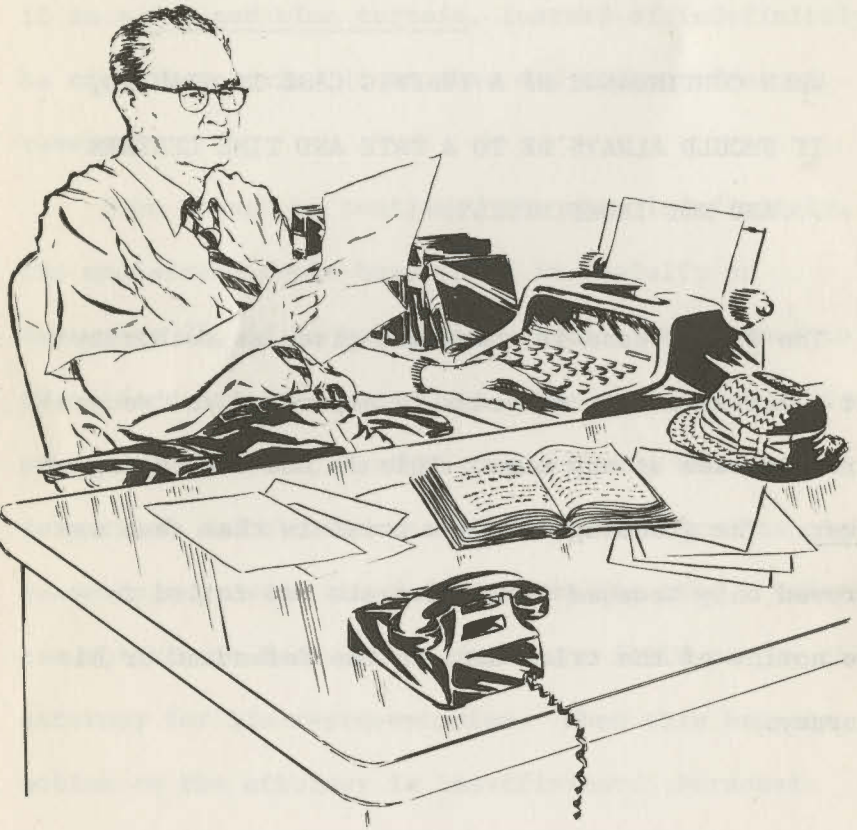
a trial date can be effected. For these reasons, the following suggestion is made:

TEACHING OF BREWER

WHEN CONTINUANCE OF A TRAFFIC CASE IS GRANTED, IT SHOULD ALWAYS BE TO A DATE AND TIME CERTAIN ...AND NOT INDEFINITELY.

The Brewer case is sometimes given as authority that a magistrate or recorder is empowered to 'reopen' a traffic case at any time. This is not the ruling of Brewer. The granting of a new trial in that case was approved only because the magistrate had failed to give notice of the trial date to the defendant or his attorney.

FLEMING'S NOTEBOOK



FLEMING'S NOTEBOOK...Chapter 98:

SEARCH BY PRIVATE CITIZEN

A private citizen, not working with police, opened defendant's car door without a search warrant, and took out a pistol. An officer, standing nearby, saw another unlawful weapon when the door was opened. He took the weapon, which was used as evidence.

RULING: Both seizures were legal. Constitution does not protect against unlawful searches and seizures by private citizens...unless they are working with police. Seizure of the other unlawful weapon by the officer was lawful because it was in 'plain sight'. He did not conduct a search, and he had a right to be where he was. US v. Maxwell, 484 F2d 1350, 5th Cir. Miss.

SEARCH BY POLICE IN EMERGENCY

Defendant was found by police seated in his car frothing at the mouth...unconscious. Police found motel key and took defendant there, where a woman in the room told them the defendant was diabetic. Police opened defendant's brief case searching for insulin. They found both insulin and money from a bank robbery. The money was used in evidence at trial.

RULING: The emergency circumstances justified the warrantless search of the brief case for insulin to aid the defendant...seizure of money found during lawful search was valid. Conviction upheld.

US v. Dunovan, 485 F2d 201.

PROTECTIVE SEARCH FOR WEAPONS

Police arrested one Bobrow for narcotics violation...while the arrest was being conducted, one Poms, a roommate of Bobrow came up...He had a shoulder bag...Police had reliable information that Poms usually carried a weapon in the shoulder bag and was an associate of Bobrow. They seized the shoulder bag and found cocaine and a pistol.

RULING: Circumstances justified protective search for weapon...Cocaine found during the 'Terry' frisk was lawfully seized. US v. Poms, 484 F2d 919, USCA 4th Cir.

INVENTORY SEARCH OF AUTO

Defendant was arrested at police station where he had gone to see about the arrests of his nephews ...Police recognized him as being wanted on a warrant from another city. When police went to lock defendant's car, they inventoried open and unlocked glove compartment, finding marijuana.

RULING: Police were under a duty to inventory contents of car in open and unlocked areas. Search was lawful. Barker v. Johnson, 484 F2d 941, USCA 5th Mich.

RECORDING OF CONVERSATION

(By Use of Hidden Recorder)

Recorder on the person of an undercover agent was used to record his conversation with defendant relative to a narcotics transaction. Recording was used in evidence at trial in Federal Court. Defendant objected that California law prohibited such recording, although Federal law did not.

RULING: Recording was properly admitted. State law does not prevail in criminal trial in Federal Court for violation of Federal law. US v. Johnson, 484 F2d 165, 9th Cir., Calif.

DRUGS...FORCIBLE ENTRY

WITHOUT SEARCH WARRANT

Undercover agent made a 'buy' from a contact at a motel, then asked about additional supplies. The contact phoned his supplier and arranged for an additional 'pickup' in 30 minutes. The agent memorized the telephone number and gave the information to police. Police went directly to the supplier's house and broke in without a warrant. Narcotics were found and admitted at trial. Defense claimed unlawful search and seizure.

RULING: Warrantless entry was legal because of the limited time involved. It would not have been possible for police to have obtained a search warrant in 30 minutes, and there was probable cause to believe that unlawful drugs were present. US v. Becker, 485 F2d 51, 6th Cir., Mich.

30...EFM

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