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POLICE OFFICER'S HANDBOOK

TIMELY DEMAND FOR
DISCLOSURE OF INFORMER

HABITUAL TRAFFIC OFFENDERS

MINIBOTTLES, SALE BY PERSONS UNDER 18

SECURITY GUARDS...PRIVATE DETECTIVES

SALE OF CHEAP PISTOLS PROHIBITED

FLEMING'S NOTEBOOK...Chapter 93

Search of Body Cavity of Prisoner
Questioning of Defendant Who Has a Lawyer
Consent to Search by Landlady
Consent to Search Given by Wife

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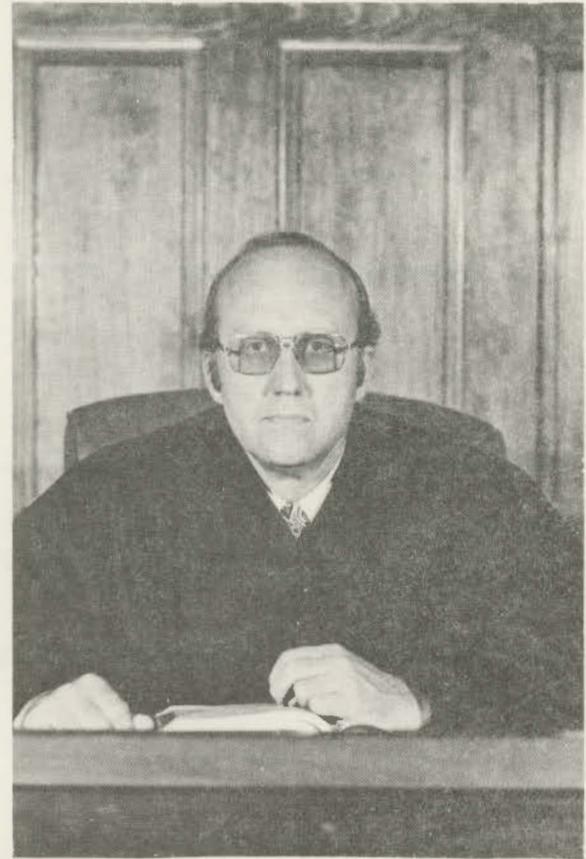
SALE OF CHEAP PISTOLS PROHIBITED

By

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South Carolina Enforcement Officers' Association
South Carolina Police Chiefs' Executive Association
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Hon. David W. Harwell
Resident Judge
Twelfth Judicial Circuit

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FOREWORD

One of the most difficult tasks that faces the members of any profession, including that of law enforcement officer, is keeping up with the changes that affect the profession. In medicine, the medical doctor gets his basic knowledge of his work from medical school and internship. Then, frequently, he becomes so involved in building and maintaining his practise that it is difficult for him to study and learn advancements, new discoveries, and fresh techniques in the field of medicine. If he is to keep abreast he must read regularly articles published in medical periodicals, attend seminars and other meetings, and, generally, keep up the educational process throughout his professional life. Who would wish to trust a physician who had graduated from medical school and successfully completed his internship, but who never thereafter made any effort to keep his knowledge current with the times.

Likewise, the law enforcement officer cannot expect to rest upon successful completion of even the highest degree of academic training, plus the best police schooling.

Both are desirable and necessary, but, like the medical school and internship for the doctor, training in the basics, however good, is not enough. The trained officer, unlike the untrained one, can readily absorb new legal decisions and statutes affecting his profession, but he must know about them. Otherwise, his training will do him little good beyond the point at which his basic training stopped.

Tonight, in an effort to contribute a little to the process of 'keeping abreast' in the field of law enforcement, we shall note and discuss several significant acts of our 1973 General Assembly affecting law enforcement.

David W. Harwell

Resident Judge

Twelfth Judicial Circuit

REVEALING INFORMERS

...TIMELY DEMAND

It has been held by the Courts for some period of time that an informer or undercover agent must be identified and made available to the defense when it can be shown that such person was in position to know facts that might support the defendant's legal defense. The State, in such cases, must either bring the informer or agent forward...or have the charge dismissed.

In most cases, demand for production of informers and agents has come at trial, and, it is conceded, most of the time such demand is made merely as a trial tactic for purposes of delay, or in the hope of forcing the State to abandon the prosecution rather than 'burn' a valuable source. It is not reasonable to think that the informer or agent will be of service to the defense, but probability is not the test. It is what such person was in position to know that matters in court.

Under the United States Supreme Court decision of Roviaro, 1 Led 2nd 639, the basic rule relative to disclosure of informants by the prosecution was set forth:

"We believe that no fixed rule with respect to disclosure is justifiable. The problem is one that calls for balancing the public interest in proecting the 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 each case, taking into consideration the crime charged, the possible defenses, the possible significance of the informer's testimony and other relevant factors."

One question that was not answered by the Roviaro decision, however, was when the demand for disclosure of an informer must be made. Some jurisdictions have held that such demand must be made within a reasonable time, but, the term 'reasonable time' was not adequately defined.

The South Carolina Supreme Court has made an important ruling on the question of 'reasonable time' in a case from Horry County entitled State v. Batson, Smith's Advance Sheets, filed August 16, 1973. The defendant was charged with sale of LSD, and it was

established that the sale was set up by two girl informers. It was alleged by the defendant Batson that he knew nothing of the drug transaction, but that it was handled entirely by a co-defendant. In such circumstances, the two girl informants would have been in position to know the facts about Batson's defense.

At trial, the defense attorney demanded disclosure of the two girl informants on the ground that their testimony could support the defendant's position.

The State Supreme Court, upholding the ruling of the trial judge, said that the defendant would have been entitled to disclosure of the informants if demand had been made within a reasonable time before trial, but that demand for disclosure at trial, when there had been ample opportunity to do so beforehand, came too late, and that the defendant had no right to disclosure at such late date:

"While a situation might very well arise where an accused would not know until during a trial that knowledge of the identity of an informer-witness might be beneficial or helpful to him, under the facts of this

case we conclude that there was not a timely, bona fide request for the identity of these witnesses. The appellant admittedly knew of the existence of all of these witnesses for four months prior to the trial and if their identities were deemed of any importance or benefit to him, such should have been sought prior to the commencement of the trial. As mentioned above, courts from other jurisdictions are not in accord as to what constitutes a timely request, but in this jurisdiction, in view of our system of rotating circuit judges and fixed and limited terms of court, we conclude that a request to be timely should be made prior to the commencement of the trial where as here all of the facts other than identities were known to the accused, he was represented by retained counsel and there was abundant time in which to make the request prior to trial."

WITNESSES NOT PRODUCED

BY THE PROSECUTION

It is a rule of law, mostly civil in nature, that if a witness is under control of one of the parties to a lawsuit, and that side does not call that witness, the judge must instruct the jury that that witness' testimony would have been adverse to the side that could have produced him, but did not.

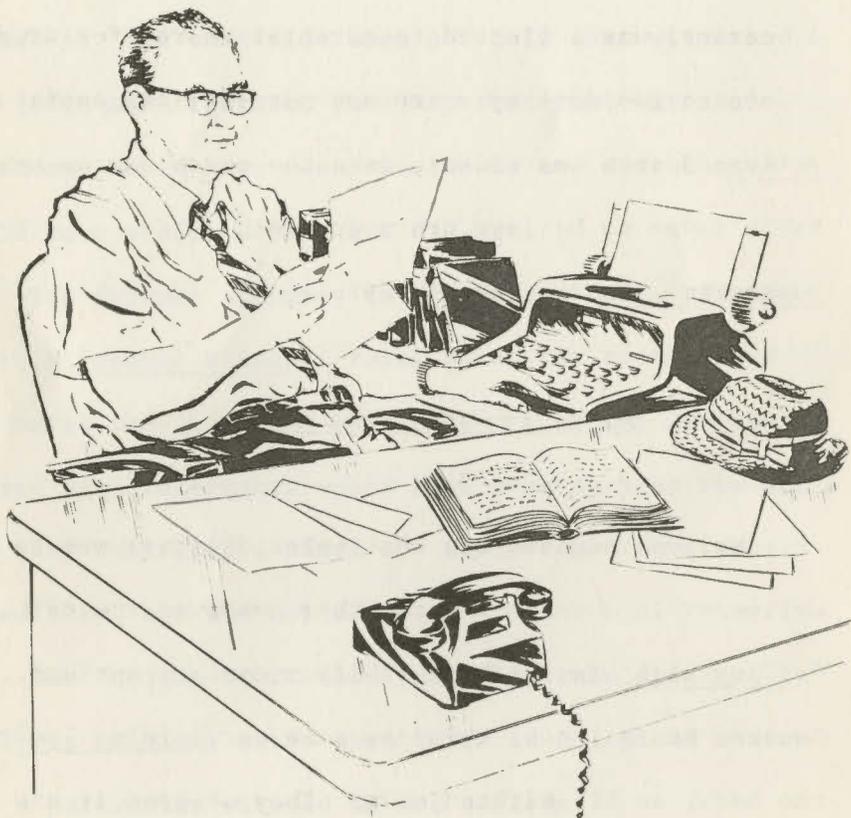
The defense attorney in the Batson case, relying on this 'absent witness' rule, asked the trial judge to charge the jury that the testimony of the two undisclosed girl informants would have been against the State had they testified...since the State could have produced them, but did not do so.

The Supreme Court said that this rule does not apply in criminal cases when there is a logical reason why a particular witness is not called:

"In the instant case there was no error in the refusal of the requested charge. A full and logical explanation for the failure of the State to produce the

additional witnesses was furnished to both the court and the jury, and, as held by His Honor, such a charge to the jury would have served to defeat the entire purpose of nondisclosure of the identity of undercover agents and informers."

FLEMING'S NOTEBOOK



FLEMING'S NOTEBOOK...Chapter 93:

SEARCH OF BODY CAVITY OF PRISONER

A prisoner, before being transported to court for a hearing, was subjected to a rectal search for drugs ...search was done by a trained para-medical assistant.

Ruling: Search was lawful, even tho there was no probable cause to believe drugs present.

Daugherty v. Harris, 476 F2d 292.

SEARCH OF AUTOMOBILE RULING LAW

Police received tip that untaxed liquor was to be delivered in a certain car...they observed the car 'riding high' in the back as if on special springs... Several hours later, they saw same car 'riding low' in the back, as if weighted down. They stopped it and made a warrantless search, finding contraband. Ruling: Police could search car without warrant in the circumstances, under the Carroll rule. US v. Somervill, 477 F2d 393.

QUESTIONING DEFENDANT

WHO HAS A LAWYER

Even tho a defendant has a lawyer, and this is known to police, questioning by police may be conducted with voluntary permission of suspect...right to have lawyer present may be waived. US v. Vasquez, 476 F2d 730.

FALSE STATEMENT IN AFFIDAVIT

RENDERS SEARCH WARRANT INVALID

It was shown that one statement of fact made in the affidavit to obtain a search warrant was false... Since it involved a material fact, this false statement rendered the search warrant unlawful. US v. Morris 477 F2d 657.

INVESTIGATIVE QUESTIONING

FBI questioned a suspect about stolen machinery... the suspect was not the only person under investigation

...no Miranda warnings were given...Suspect permitted search and stolen machinery was found. Ruling: No Miranda warnings necessary. US v. Sicilia 475 F2d 308.

CONSENT TO SEARCH BY LANDLADY

Landlady who rented room gave consent to police officers to search room. Consent unlawful. Landlady has no right to consent to search of room rented to someone else. US v. Mattock 476 F2d 1083.

CONSENT TO SEARCH GIVEN BY WIFE

A wife, occupying same premises as husband, may give consent to search the premises. McGravy v. Moore, 476 F2d 281.

MINIBOTTLES MAY NOT BE SOLD
OR DELIVERED BY PERSONS UNDER 18

Act No. 432...1973

SECTION 1. PERSONS SERVING MINIBOTTLES TO BE AT LEASE EIGHTEEN. - Section 10 of Act 398 of 1967, as last amended by Act 1063 of 1972, is further amended by adding subsection (6) which shall read:

"(6) No person shall serve or deliver to a purchaser any alcoholic liquors in sealed containers in a business where such sales are authorized unless such person has attained the age of eighteen years; nothing contained herein shall be construed as allowing bartenders under the age of twenty-one."

SECTION 2. PENALITIES. - Act 398 of 1967, as last amended by Act 1063 of 1972, is further amended by adding a new Section 10.11 which shall read:

"Section 10.11. Any person, corporation or organization who has in their possession, custody, or within their control alcoholic liquors which are handled, stored, kept, possessed, transported, used or distributed

in violation of any of the provisions of Chapter 1, Title 4 of the 1962 Code, or in violation of the provisions of this act or with the design of avoiding payment of any license taxes provided in Chapter 16 of Title 65 of the 1962 Code, or any other taxes shall be required to pay a penalty of twenty dollars per container to be assessed by the Tax Commission as other taxes are collected."

SECTION 3. TIME EFFECTIVE. - This act shall take effect upon approval by the Governor.
Approved the 29th day of June, 1973.

HABITUAL TRAFFIC OFFENDERS

New and more severe penalties against driver licenses, and for driving under suspension, will be applied against habitual traffic offenders beginning next July...July 1, 1974.

Act No. 344...1973
(In part only)

SECTION 2. HABITUAL OFFENDER DEFINED. - An habitual offender shall mean any person whose record as maintained in the office of the State Highway Department, shows that he has accumulated the convictions for separate and distinct offenses described in subsections (a), (b) and (c) committed during a three-year period; PROVIDED, that where more than one included offense shall be committed within a one-day period such multiple offenses shall be treated for the purposes of this act as one offense:

(a) Three or more convictions, singularly or in combination of any of the following separate and distinct

offenses arising out of separate acts:

(1) Voluntary or involuntary manslaughter resulting from the operation of a motor vehicle;

(2) Operating or attempting to operate a motor vehicle while under the influence of intoxicating liquor, narcotics or drugs;

(3) Driving or operating a motor vehicle in a reckless manner;

(4) Driving a motor vehicle while his license, permit or privilege to drive a motor vehicle has been suspended or revoked;

(5) Any offense punishable as a felony under the motor vehicle laws of this State or any felony in the commission of which a motor vehicle is used;

(6) Failure of the driver of a motor vehicle in any accident resulting in the death or injury of any person to stop close to the scene of such accident and report his identity;

(b) Ten or more convictions of separate and distinct offenses involving moving violations singularly or in combination, in the operation of a motor vehicle, which

are required to be reported to the Highway Department for which four or more points are assigned pursuant to Section 46-196 of the 1962 Code or which are enumerated in subsection (a) of this act.

(c) The offenses included in subsections (a) and (b) shall be deemed to include offenses under any federal law, any law of another state or any municipal or county ordinance of another state substantially conforming to the above provisions.

(d) For the purposes of this act, the term "conviction" shall mean a final conviction or forfeiture of bail.

SECTION 9. HABITUAL OFFENDERS NOT TO BE LICENSED. -

No license to operate motor vehicles in this State shall be issued to an habitual offender, nor shall a nonresident habitual offender operate a motor vehicle in this State:

(a) For a period of five years from the date of the order of the court finding such person to be an habitual offender; and

(b) Until such time as financial responsibility requirements are met; and

(c) Until upon petition, and for good cause shown, such court may, in its discretion, restore to such person the privilege to operate a motor vehicle in this State upon such terms and conditions as the court may prescribe, subject to other provisions of law relating to the issuance of drivers' licenses.

PRIVATE SECURITY GUARDS AND
PRIVATE DETECTIVES...REGULATIONS

Act No. 387...1973
(In part only)

SECTION 4. PRIVATE DETECTIVES TO BE LICENSED. -

(a) Any person engaged in the private detective or private security business in an individual, self-employed capacity on the effective date of this act shall make a verified application in writing to the division for a license. The application for a license shall be made, under oath, on a form to be furnished by the division. The application shall state the applicant's full name, age, date and place of birth, residences and employment within the past five years and his present occupation with the names and addresses of employers, the date and place of conviction of any crime and such additional information as the division requires. Each applicant shall submit with the application one complete set of fingerprints on forms specified and furnished by the division and one photograph in color, two inches wide by three inches high,

taken within six months prior to the application. Upon receiving the application, the bond as provided in Section 6 and the license fee as provided in Section 7, the division shall grant a license to such person to conduct such private detective business or private security business stated in such application. Such licensure shall be for one year and application for renewal shall be on a form furnished by the division. Immediately upon the receipt of the license certificate issued by the division pursuant to this act, the licensee shall post and at all times display such license in a conspicuous place at his place of business. A copy or duplicate of the license certificate shall be conspicuously posted at each branch office.

(b) Any person who is employed on the effective date of this act by a person or corporation, which person or corporation is engaged in the private detective or private security business, and any person who is employed by a person or corporation to do private security work on the premises and in connection with the affairs of such employer only shall make a verified application

in writing to the division for registration. The application for registration shall be made, under oath, on a form to be furnished by the division. The application shall state the applicant's full name, age, date and place of birth, residences and employment within the past five years and his present occupation with the names and addresses of employers, the date and place of conviction of any crime and such additional information as the division requires. Each applicant shall submit with the application one set of fingerprints on forms specified and furnished by the division and one photograph in color, two inches wide by three inches high, taken within six months prior to the application. Upon receiving the application and a registration fee of five dollars, the division shall register the person and so notify the employer. The employer shall notify the division within five days of the termination of employment of any registered employee. Such registration shall be for one year and application for renewal shall be on a form furnished by the division. Such person shall pay an annual registration fee of five dollars with the renewal of such registration.

SECTION 12. PERMITS TO CARRY FIREARMS. - (a) The division may grant to any person licensed or registered in accordance with the provisions of this act a permit to carry a pistol or revolver or other firearm. Application for such permit shall be made on forms provided by the division and the fee shall be two dollars per annum. Such permit shall be for one year and application for renewal shall be on a form furnished by the division. Such permit shall not be transferable.

(b) No person shall be issued a permit until he has presented to the division proof that he is proficient in the use of firearms and has received a minimum of four hours' classroom instruction.

(c) Any person engaged in the private security business, or registered in accordance with the provisions of Section 8, and issued a permit in accordance with this section shall be authorized to carry any such firearm in an open and fully-exposed manner only while on duty and in uniform and while going to and from work.

(d) Permits for carrying firearms shall not be issued to persons licensed as private detectives.

SECTION 13. LICENSEES TO HAVE POLICE POWERS. -

Any person covered by the provisions of Section 9 or properly registered or licensed under this act who is hired or employed to patrol, guard or render a similar service on certain property shall be granted the authority and power which sheriffs have to make arrest of any persons violating or charged with violating any of the criminal statutes of this State, but shall have such powers of arrest only on the aforementioned property.

SECTION 19. TIME EFFECTIVE. - This act shall take effect January 1, 1974.

SERVICE OF CRIMINAL

PROCESS ON SUNDAY

Act No. 108...1973

SECTION 1. SERVICE OF CRIMINAL PROCESS ON SUNDAY. - Section 17-259 of the 1962 Code, as last amended by Act No. 1085 of 1970, is further amended by striking the section and inserting:

"Section 17-259. No criminal process shall be served on Sunday, except for treason, felony, violation of the law relating to intoxicating liquors, gambling, or illegal drugs, or breach of the peace. PROVIDED, however, that only law enforcement officers under bond shall be permitted to execute a search warrant."

SECTION 2. TIME EFFECTIVE. - This act shall take effect upon approval by the Governor.

Approved the 23rd day of March, 1973.

SALE OF CERTAIN

PISTOLS PROHIBITED

Act No. 419...1973

SECTION 1. CERTAIN PISTOLS MAY NOT BE SOLD. -

Act 330 of 1965 is amended by adding Section 6A which shall read:

"Section 6A. No licensed retail dealer shall sell any pistol or other handgun which has die-case frame or receiver which melts at a temperature of less than eight hundred degrees fahrenheit."

SECTION 2. TIME EFFECTIVE. - This act shall take effect upon approval by the Governor.

Approved the 9th day of July, 1973.



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