MARCH 1975

POLICE OFFICER'S HANDBOOK

THE CRIMINAL LAW

PART X

BRINGING STOLEN GOODS
INTO THIS STATE - LARCENY
(State v. Rutledge)

SEARCH AND SEIZURE -
LOCKED GLOVE COMPARTMENT
(US v. Bush)

SEARCH WARRANTS - HOW
MUCH INFORMATION NEEDED?
(US v. Welebir)

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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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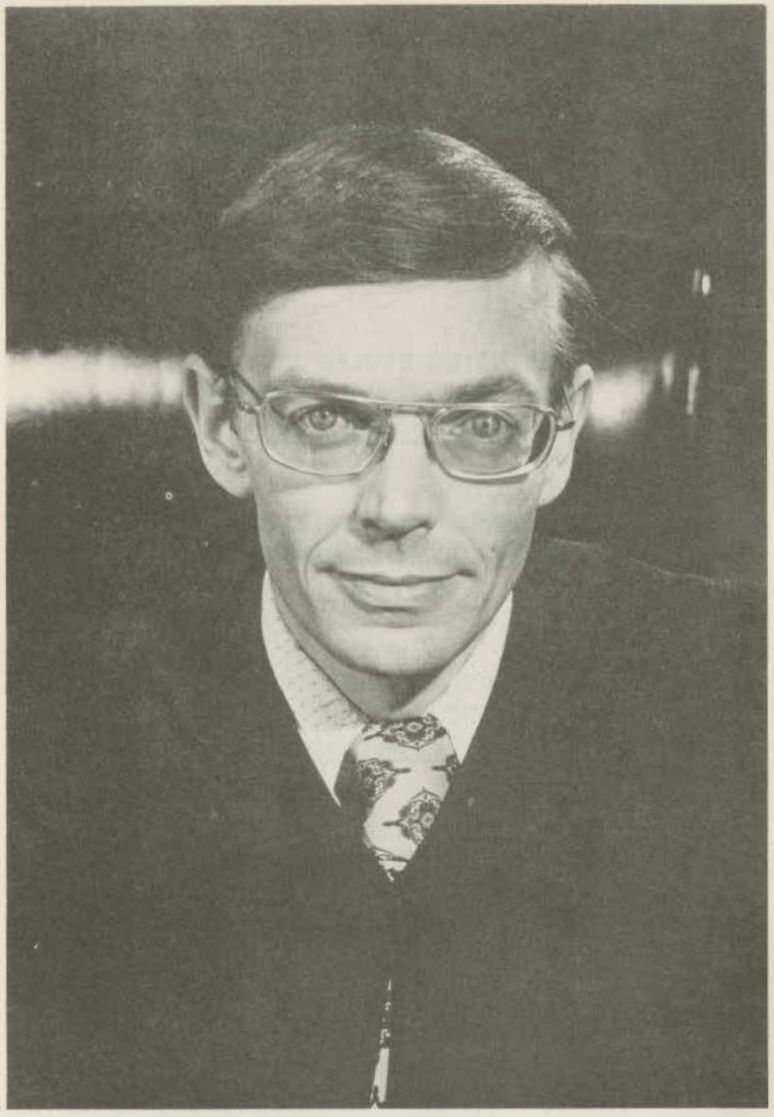

Hon. James W. Sparks
Family Court Judge
Greenville County, S.C.

"It is well settled in South Carolina that one who steals property in another state and brings it into this State is subject to prosecution for larceny here."

James W. Sparks

Family Court Judge

Greenville County, S.C.

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BRINGING STOLEN GOODS INTO SOUTH CAROLINA

A PERSON BRINGING STOLEN GOODS INTO THIS STATE MAY BE CHARGED WITH LARCENY IN SOUTH CAROLINA

REF.: State v. Rutledge
101 SE 2d 189

Cigarettes were stolen in North Carolina and brought into Pickens County, South Carolina, to be disposed of in this State. The defendant appealed from conviction, arguing that the goods were stolen in North Carolina...not in this State...and, therefore, the act of the defendant did not constitute larceny in South Carolina. The State Supreme Court, upholding the conviction, said:

"...it is well settled in South Carolina that one who steals property in another State and brings it into this State is subject to prosecution for larceny here."

WHEN A PERSON RECEIVES IN SOUTH CAROLINA GOODS STOLEN IN ANOTHER STATE (KNOWING THEM TO HAVE BEEN STOLEN), THAT PERSON MAY BE PROSECUTED HERE FOR RECEIVING STOLEN GOODS.

"It is generally agreed among the authorities that in those jurisdictions where it is held to be larceny to bring property into the State which has been stolen in another State, one who there receives such property knowing it to have been stolen is guilty of receiving stolen goods." State v. Rutledge.

The Supreme Court, giving its reasons for the Rutledge rule, which is also known in some areas as the 'Plowden - Smith Concept', said:

"Where one takes goods from another in any place, under circumstances which make the taking felonious, the possession of the owner, in contemplation of law, continues, and where the goods so taken are carried into another state, that

constitutes a new taking and asportation in that state, for which an indictment for larceny will lie." See 156 ALR 862.

LEGAL HISTORY OF RULE

A case decided in 1883 first set the rule in South Carolina. State v. Hill, 19 SC 435. The defendant, a sewing machine repairman, stole a horse in Transylvania County, N.C., brought it to a livery stable in Spartanburg, South Carolina, and there sold it to the owner of the stable. He was apprehended and charged with 'horse stealing' (grand larceny) in South Carolina.

In speaking to the question, the South Carolina Supreme Court said in the Hill case (1883):

"Here, we may well look to the felonious taking in another State for the purpose of ascertaining the intent, and when the act is consumated in this State

by bringing the stolen property here and converting it to the use of the thief, the offense is complete here."

A PERSON WHO STEALS GOODS IN ONE COUNTY AND CARRIES THEM TO ANOTHER COUNTY IN THE STATE MAY BE PROSECUTED IN EITHER COUNTY.

Further explaining the same point of law, the State Supreme Court said in a 1953 decision, State v. Vareen, 74 SE 2d 223:

"It is well settled that one may be indicted for larceny in the county where he commits a theft or in that to which he takes the stolen goods." State v. Bryant, 9 Rich. 113.

OPPOSITE RULE IN SOME STATES

Many states, among them Georgia and North Carolina, do not follow the rule of South Carolina on the question. This opposite rule is set forth in an early Georgia Supreme Court case, Golden v. State, 58 SE 557, in which it was held that a person in South Carolina could not be prosecuted in Georgia for receiving stolen goods. Neither could the person who stole the goods in South Carolina be prosecuted for larceny in Georgia.

WARRANTLESS SEARCH OF AUTOMOBILE ON HIGHWAY - SEIZURE OF EVIDENCE FOUND IN LOCKED GLOVE COMPARTMENT

(US v. Bush, 500 F2d 19)

Police officers in Kentucky received information from an APB distributed through their dispatcher that a convicted felon (described) was transporting a firearm across state lines (violation of Federal law) in a described automobile. Spotting the car, they searched the locked glove compartment without a search warrant and without permission of the owner. A firearm was found and used in evidence to convict the defendant at trial in Federal court.

Conviction was upheld on the ground that information from another police agency through official police channels that the suspect was probably transporting the firearm in violation of law constituted probable cause to search the suspect vehicle on the highway without a warrant and without

permission of the driver of the car. The US Court of Appeals (6th Circuit) said on July 16, 1974:

"With reference to appellant's (defendant's) contentions as to the legality of the search, the record discloses that the police officers had information from the police dispatcher that the appellant (suspect) was in a stolen car and that there might be a gun in the car. It further appears that, after the officers stopped the car in question, they searched the appellant and found several bullets.* Based on the foregoing, we find that the officers had probable cause for their subsequent search of the automobile and its (locked) glove compartment, where the gun was found, and, under the circumstances, a warrant was not required for that search nor the seizure herein was unreasonable..."

(*Note: Search and seizure would have been lawful even had no bullet been found on the defendant's person. Ed.)

HOW MUCH DOES IT TAKE TO MAKE PROBABLE CAUSE?

A druggist is busily engaged in preparing prescriptions when the 'phone rings. He answers. A voice states that its owner wishes to place an order for a list of items. The druggist reaches for his pencil, takes down the name and address, then begins to list the items and amounts wanted. After promising delivery in two hours, the druggist puts the list down to return to his unfinished business. He stops suddenly, thoughtfully picks up the list he has just jotted down and studies it. After a few seconds, he picks up the 'phone again, list still in his hand, and talks to the Chief of the Bureau of Narcotics.

The list of items ordered by the unknown customer are things that could be used in the manufacture of amphetamines...'precursors' to the creation of methamphetamine, an unlawful drug.

The druggist has no further information about the unknown caller except his address, and the fact that the he will expect delivery of the items within two hours.

Leaning back in his desk chair, the Narcotics Chief peruses the list thoughtfully. Not unlawful drugs in themselves...so it's not a violation to possess them. They can be used for other purposes. Nothing is really known about the customer to point to a probability that he will use the 'precursors' to manufacture amphetamines. Such a conclusion would be little more than guess work...certainly not probable cause.

The Chief decides...correctly...that he does not have enough at this point to obtain a valid search warrant. What he needs is some bit of information that will make it probable that the customer intends to make amphetamines of the items he has ordered...and not something else. Not proof. He

does not have to have that. Only enough to give the average person reason to believe that this particular customer intends to violate the law in this respect. If so, it is reasonable to believe that drugs will be found on his premises.

Finally the necessary ingredient appears. An informer, well known to the Chief of Narcotics, states that the customer, Andrew Welebir, known to the informer as a 'source' for amphetamines, had told him that a supply would be available for the street in a few days. The order for drugs necessary to manufacture 'speed', plus the informers knowledge, made out probable cause sufficient to obtain a valid search warrant. In upholding Welebir's conviction for 'possession with intent', the Federal Court of Appeals said:

RELIANCE ON INFORMATION

FROM FELLOW OFFICERS

(From Reporter's Headnotes)

"Affiant, seeking search warrant, can base his information on information in turn supplied to him by fellow officers." Welebir, hn.2.

INFORMATION SUFFICIENT

TO SUPPORT WARRANT

Search warrant was valid when based on affidavit containing this information:

"...defendant had purchased chemicals of such type and quantity that seller (druggist) advised Bureau of Narcotics that they were capable of being used to manufacture illicit drugs (amphetamines)."

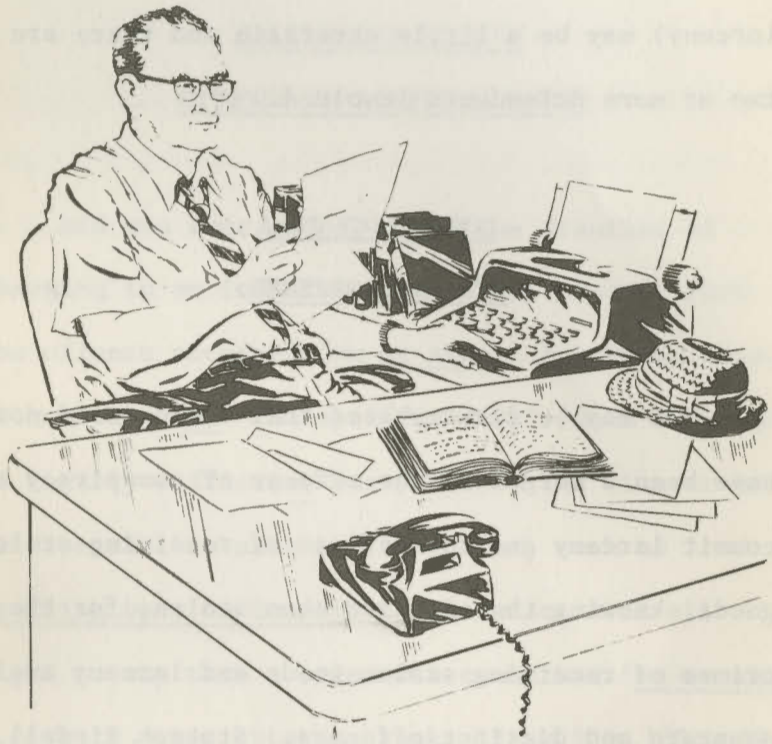
AND

"...that (a) confidential source, who had given reliable information resulting in three convictions, stated that (he knew) defendant intented to set up laboratory for manufacture of illicit drugs." Welebir, hn.4.

'PROBABLE CAUSE' DISTINGUISHED FROM 'PROOF OF GUILT'

"It (is) not required that affidavit in support of search warrant state facts sufficient to convict defendant...it (is) sufficient that the affidavit, taken as a whole, (is) sufficiently detailed and specific to warrant a finding of probability of such activity." Welebir, hn.1.

FLEMING'S NOTEBOOK!



FLEMING'S NOTEBOOK...Chapter 110:

It is frequently desirable to place a charge of criminal conspiracy against defendants when the evidence as to the principal crime charged (such as larceny) may be a little uncertain and there are two or more defendants involved.

CONSPIRACY IS A SEPARATE OFFENSE.

"It may be first stated that there could not have been a merger of the offense of conspiracy to commit larceny and the offense of receiving stolen goods, knowing them to have been stolen, for the crimes of receiving stolen goods and larceny are separate and distinct offenses. State v. Tindall, 213 SC 484, 50 SE 2d 188. Apart from this, however, we have held that a conspiracy to commit a crime is not merged in the commission of the completed offense. (Emphasis added by EFM.) State v. Ferguson, 221 SC 300, 70 SE 2d 355."

In the Ferguson case, the defendant was convicted of 'conspiracy to set up a lottery' and 'setting up a lottery', and was sentenced on both counts. See 15 CVS, Conspiracy, S.76, p. 1109.

SPECIFYING DATE OF OFFENSE IN ARREST WARRANT.

Did you ever wonder about the practise of charging in an indictment or arrest warrant that the offense occurred 'on or about' a certain date, rather than 'on' the specific date? Such a charge is legally sufficient except where the time or date is essential to make out the crime, such as 'selling beer on Sunday'. Otherwise it is all right to say that a crime was committed 'on or about' a certain date. State v. Peak, 134 SC 329, 133 SE 31; State v. Rutledge, 101 SE2d 289. In the Rutledge case, the time of the offense as proven in court varied several weeks from the date charged in the indictment. This did not affect the validity of the conviction.

In a case tried in 1879, State v. Branham, 13 SC 389, in which the defendant was charged with burglary and larceny (taking seventeen pieces of bacon from the smoke-house of Nick C. Joiner) on February 9, 1879, it was proven at trial that the offense took place in February, 1878. Branham appealed, contending that such error invalidated his conviction. The Supreme Court disagreed, stating:

"It is not necessary to prove the precise day or even year laid in the indictment..."

CONFESSIONS

It is interesting that the 1879 case of Branham (13 SC 389) set forth a rule on confessions that has not been changed insofar as this editor has been able to find:

WHEN POLICE AUTHORITIES TAKE A WRITTEN STATEMENT ADMITTING GUILT, VERBAL TESTIMONY AS TO THE CONTENTS OF THE STATEMENT IS NOT ADMISSABLE AT TRIAL; THE WRITTEN STATEMENT MUST BE USED INSTEAD, IF AVAILABLE.

The Court said in Branham that from the infirmity of memory there is always more or less uncertainty about parol testimony, and that it was legal error to receive oral testimony of confessions made in writing where there was no obstacle in the way of the written confessions being offered. Conviction was reversed.

"It is necessary to guard with jealousy all confessions made by prisoners in arrest in the presence of the officers of the law."

From a recent decision of the United States Supreme Court? Miranda? No! The language quoted is from an 1879 decision of the Supreme Court of South Carolina. State v. Branham, 13 SC 389.

Can the testimony of an accomplice in crime, standing alone, with no corroborating evidence, be sufficient to convict? In South Carolina, it is sufficient, according to the highest Court of the State. Associate Justice Oxner said in 1957 (State v. Rutledge, 101 SE2d 289):

"The weight to be given the testimony of an accomplice is for the fact finding body (jury) and if his uncorroborated evidence satisfies the jury of the defendant's guilt beyond a reasonable doubt, a conviction is warranted."

A Federal Court of Appeals has held that the Constitution of the United States does not require that the entire sworn statement to support a search warrant (Affidavit) be in writing and attached to the search warrant, but says, instead, that additional information to support a written affidavit may be given to the issuing magistrate verbally under oath. US v. Hill, 500 F2d 315 (5th Cir., 1974).

WARNING: Neither the Supreme Court of the United States nor the Supreme Court of South Carolina has ruled on this question. One Federal Court of Appeals has held that all information used to support the issuance of a search warrant must be contained in the written affidavit. US v. Anderson, 453 F2d 174 (9th Cir., 1971).

At present, the only safe thing to do when applying for search warrant is to include in the written affidavit all information necessary to support issuance of the search warrant.

EDITOR'S COMMENT

It is the position of the Editor of Fleming's Notebook that well known fading and confusion in human memories should make it necessary that it be decided ultimately that all the facts necessary to support issuance of a search warrant be included in the written affidavit. Although there is some argument in favor of sworn verbal information instead, the best reasoning is that the 'four corners' of the affidavit must constitute the alpha and omega for judging probable cause in order to insure that the reviewing court may determine whether the constitutional requirements have been met without relying upon such a foundation of sand as human memory.

DISCLOSURE OF INFORMANT

North Carolina's Supreme Court has held...and no decision of this State is in contradiction... that disclosure of the identity of a confidential informer will not be allowed unless it clearly appears such disclosure would be relevant or helpful to the defense. Otherwise, the court will not require such disclosure. State v. Watson, 198 SE2d 185. It is the burden of the defendant to request the disclosure and to show how it will help the defense.

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