



CJI Legal Briefs

Volume 3 Issue 2

Criminal Justice Institute

June 1998

Lee Colwell, Director
Criminal Justice Institute
University of Arkansas System
7723 Asher Avenue, Suite B
Little Rock, AR 72204
501-570-8000
1-800-635-6310

Edited by Don Kidd

Contents

- 1 CONFESSIONS - BRUTON STATEMENTS
- 2 CIVIL LIABILITY - UNCONSTITUTIONAL MOTIVE IN 42 U.S.C. § 1983 CIVIL RIGHTS CASES
- 2 DISCRIMINATION - GRAND JURORS
- 2 DRIVERS LICENSE SUSPENSION - CIRCUIT COURT
- 3 DRIVING WHILE INTOXICATED - EVIDENCE OF REFUSAL TO TAKE A BREATHALYZER TEST
- 3 EVIDENCE - DRUG RECOGNITION EXPERT TESTIMONY
- 3 EVIDENCE - EXCULPATORY POLYGRAPH EVIDENCE
- 4 EVIDENCE - EXPERT TESTIMONY PROPERLY EXCLUDED
- 4 EVIDENCE - OPINION TESTIMONY REGARDING DRUGS
- 4 EVIDENCE - VIDEO TAPE OF INTOXICATED SUBJECT
- 4 FIFTH AMENDMENT - COMPELLED TESTIMONY
- 5 FREEDOM OF INFORMATION ACT
- 5 LOCAL OFFICIALS - LEGISLATIVE IMMUNITY
- 5 SEARCH AND SEIZURE - CURTILAGE
- 5 SEARCH AND SEIZURE - GARBAGE
- 6 SEARCH AND SEIZURE - INVENTORY OF A VEHICLE PURSUANT TO WRITTEN DEPARTMENTAL POLICY
- 8 SEARCH AND SEIZURE - "NO KNOCK" ENTRY AND PROPERTY DESTRUCTION
- 10 SEARCH AND SEIZURE - VEHICLE SEARCH INCIDENT TO ARREST
- 11 SEARCH WARRANT AFFIDAVITS
- 12 SEXUAL HARASSMENT - SAME SEX
- 12 STOP AND FRISK
- 14 ADDENDUM

CONFESSIONS - BRUTON STATEMENTS

In *Gray v. Maryland*, No. 96-8653, 3/9/98, the United States Supreme Court stated that the issue in this case concerns the application of *Bruton v. United States*, 391 U.S. 123 (1968). *Bruton* involved two defendants accused of participating in the same crime and tried jointly before the same jury. One of the defendants had confessed. His confession named and incriminated the other defendant. The trial judge issued a limiting instruction, telling the jury that it should consider the confession as evidence only against the codefendant who had confessed and not against the other defendant named in the confession. In *Bruton*, the Court held that, despite the limiting instruction, the Constitution forbids the use of such a confession in the joint trial.

This case differs from *Bruton* in that the prosecution here edited the codefendant's confession by substituting for the defendant's name in the confession a blank space or the word "deleted." The Court stated that they must decide whether these substitutions make a significant legal difference. It held that they do not and that *Bruton's* protective rule applies.

In 1993, Stacy Williams died after a severe beating. Anthony Bell gave a confession to the Baltimore City police, in which he said that he (Bell), Kevin Gray and Jacquin "Tank" Vanlandingham had participated in the beating that resulted in Williams' death. Vanlandingham later died. A Maryland grand jury indicted Bell and Gray for murder and the State of Maryland tried them jointly. The trial judge, after denying Gray's motion for a separate trial, permitted the State to introduce Bell's confession into evidence at trial, but the judge ordered the confession **redacted** (edited or blacked out). Consequently, the police detective who read the confession into evidence said the word "deleted" or "deletion" whenever Gray's name or Vanlandingham's name appeared. Immediately after the police

DISCLAIMER

The Criminal Justice Institute publishes Legal Briefs as a research service for the Arkansas law enforcement and criminal justice system. Although Legal Briefs is taken from sources believed to be accurate, readers should not rely exclusively on the contents of this publication. While a professional effort is made to insure the accuracy of the contents of this publication, no warranty, expressed or implied, is made. Readers should always consult competent legal advisors for current and independent advice.

Your are encouraged to
make copies of this
publication and
distribute them to
others in your agency



detective read the edited confession to the jury, the prosecutor asked, “after he gave you that information, you subsequently were able to arrest Mr. Kevin Gray; is that correct?” The officer responded, “That’s correct.” The State also introduced into evidence a written copy of the confession with those two names omitted, leaving in their place blank white spaces separated by commas. The State produced other witnesses, who said that six persons (including Bell, Gray, and Vanlandingham) participated in the beating. Gray testified and denied his participation. Bell did not testify. When instructing the jury, the trial judge specified that the confession was evidence only against Bell; the instructions said that the jury should not use the confession as evidence against Gray. The jury convicted both Bell and Gray. Gray appealed. Maryland’s intermediate appellate court accepted Gray’s argument that Bruton prohibited use of the confession and set aside his conviction. 107 Md. App. 311, 667 A. 2d 983 (1995). Maryland’s highest court disagreed and reinstated the conviction. 344 Md. 417, 687 A. 2d 660 (1997). The United States Supreme Court granted certiorari in order to consider Bruton’s application to a redaction that replaces a name with an obvious blank space or symbol or word such as “deleted.”

The United States Supreme Court stated that redaction that replaces a defendant’s name with an obvious indication of deletion, such as a blank space, the word “deleted,” or a similar symbol, still falls within Bruton’s protective rule. The Court stated that certain

“powerfully incriminating extrajudicial statements of a codefendant”—those naming another defendant—considered as a class, are so prejudicial that limiting instructions cannot work. Unless the prosecutor wishes to hold separate trials or to use separate juries or to abandon use of the confession, he must redact the confession to reduce significantly or to eliminate the special prejudice that the Bruton Court found. Redactions that simply replace a name with an obvious blank space or a word such as “deleted” or a symbol or other similarly obvious indications of alteration, however, leave statements that, considered as a class, so closely resemble Bruton’s unredacted statements that the law must require the same result.

**CIVIL LIABILITY -
UNCONSTITUTIONAL
MOTIVE IN 42 U.S.C. §
1983 CIVIL RIGHTS
CASES**

In *Crawford v. Britton*, No. 96-827, 5/4/98, Crawford was a long-time, litigious and outspoken prisoner in the District of Columbia’s Correctional System. Because of overcrowding at the District’s prison, he was transferred, first to Washington State, then to facilities in several other locations, and ultimately to Florida. His belongings were transferred separately. When the District’s Department of Corrections received his belongings from Washington State, Patricia Britton, a District Correctional Officer, had Crawford’s brother-in-law pick them up, rather than shipping them directly to Crawford’s next desti-

nation. Crawford did not receive the belongings until several months after he reached Florida. He filed suit under 42 U.S.C. § 1983 alleging that Britton’s diversion of his property was motivated by an intent to retaliate against him for exercising his First Amendment rights. The District Court dismissed the complaint. The United States Court of Appeals ruled that in any case in which an official’s improper motive is part of the plaintiff’s case, the plaintiff must offer clear and convincing evidence of that motive to survive either a pretrial motion for summary judgment or a mid-trial motion for a directed verdict.

The United States Supreme Court vacated the judgment of the Court of Appeals and remanded the case for further proceedings. The United States Supreme Court stated that a civil rights plaintiff who alleges a claim requiring proof that an official had an improper motive for taking certain actions does not have to come up with “clear and convincing evidence” of the improper motive at the summary judgment stage. The Court of Appeals had apparently based its opinion, in part, on a desire to limit discovery in this type of case. The United States Supreme Court stated that this goal was better resolved through rule-making or legislation.

**DISCRIMINATION -
GRAND JURORS**

In *Campbell v. Louisiana*, No. 96-1584, 4/21/98, the United States Supreme Court stated that a white criminal defendant has



standing to object to discrimination against black persons in the selection of grand jurors. Finding that the defendant had the requisite standing to raise equal protection and due process claims, the United States Supreme Court reversed the Louisiana Supreme Court and remanded the case for further proceedings.

DRIVERS LICENSE SUSPENSION - CIRCUIT COURT

In *Cook v. State*, No. CR 97-1215, Ricky L. Cook was stopped by Trooper James P. Baker of the Arkansas State Police for driving ninety-one miles per hour in a sixty mile-per-hour zone. After failing four field sobriety tests, Cook was arrested and charged with DWI, first offense, and speeding. On May 15, 1997, following a bench trial Cook was found guilty of DWI, first offense. Sentencing was set for June 19, 1997. At the subsequent sentencing hearing, the circuit court judge asked if Cook's drivers license had been suspended by the Department of Finance and Administration (DF&A) pursuant to Arkansas Code Annotated § 5-65-104 (Repl. 1997). Cook's counsel told the judge that a hearing had been conducted at DF&A and that DF&A had decided not to suspend Cook's drivers license because of the likelihood of Cook's success at trial. The circuit court judge then sentenced Cook to 365 days in jail with 360 days suspended, fined him a total of \$ 350.00 for DWI and \$ 100.00 for speeding, and suspended his driver's license for 120 days.

Cook appealed contending

that after passage of Act 802 of 1995 the judiciary no longer has jurisdiction to suspend or revoke a person's drivers license since this power had been transferred to DF&A. The Arkansas Supreme Court cited Arkansas Statute Annotated § 27-50-306, which provides the circuit court with authority to assess additional penalties, including suspension of a drivers license for one year. The Court felt this statute resolved the issue entirely. The Arkansas Supreme Court did not decide the issue of whether suspension of a drivers license by the circuit court is an appropriate sanction where DWI is the sole offense involved.

DRIVING WHILE INTOXICATED - EVIDENCE OF REFUSAL TO TAKE A BREATHALYZER TEST

In *Medlock v. State*, CR 97-865, 3/5/98, one of John E. Medlock's contentions was that the introduction of evidence bearing on his refusal to take a breathalyzer test should not be admitted in his trial on charges of driving while intoxicated (DWI). The Arkansas Supreme Court stated that evidence of a refusal to submit to a chemical test can be properly admitted as circumstantial evidence showing a knowledge or consciousness of guilt, and that such evidence possesses independent relevance bearing on the issue of intoxication and was not being offered merely to show that Medlock was a bad person.

EVIDENCE - DRUG RECOGNITION EXPERT TESTIMONY

In *Williams v. State*, No. 95-2476, 3/18/98, the Florida Court of Appeals for the Third District advised that a police officer who had been specially trained in how to apply a standardized protocol for recognizing the effects of controlled substances may testify as to his opinion that a driver was under the influence of particular categories of drugs. The Court stated that the Drug Recognition Expert (DRE) protocol that has been developed with funding from the National Highway Traffic Safety Administration does not entail novel scientific evidence and does not have to satisfy the test for the admissibility of scientific evidence.

EVIDENCE - EXCULPATORY POLYGRAPH EVIDENCE

In *United States v. Scheffer*, No. 96-1133, 3/31/98, a polygraph examination of Scheffer indicated, in the opinion of an Air Force examiner, that there was no deception in Scheffer's denial that he had used drugs since enlisting in the Air Force. A urinalysis indicated the presence of methamphetamine and Scheffer was tried by general court-martial for using that drug and for other offenses. Scheffer attempted to introduce the polygraph evidence to support his testimony that he did not knowingly use drugs. The military judge relied on Military Rule of Evidence 707, which makes poly-



graph evidence inadmissible in court-martial proceedings. Scheffer was convicted on all counts and the Air Force Court of Criminal Appeals affirmed. The Court of Appeals for the Armed Forces reversed, holding that a *per se* exclusion of polygraph evidence offered by an accused violates his Sixth Amendment right to present a defense.

The United States Supreme Court reversed holding that a defendant's right to present relevant evidence is subject to reasonable restrictions to accommodate other legitimate interests in the criminal trial process. State and federal rulemakers have broad latitude under the Constitution to establish rules excluding evidence. Military Rule of Evidence 707 serves the legitimate interest of ensuring that only reliable evidence is introduced and there is simply no consensus that polygraph evidence is reliable.

**EVIDENCE - EXPERT
TESTIMONY PROPERLY
EXCLUDED**

In *Parker v. State*, CR 97-1195, 5/7/98, the Arkansas Supreme Court stated that the Craighead County Circuit Court had properly excluded the testimony of Dr. Marc Zimmerman, a forensic psychologist, who would have testified about the unreliability of eyewitness testimony. The Court was of the opinion that such testimony would not be helpful to the jury and would have, in fact, usurped the jury's role as the trier of fact.

**EVIDENCE - OPINION
TESTIMONY
REGARDING DRUGS**

In *Marts II v. State*, CR 97-1212, 4/23/98, two Fort Smith Police Department officers—Detective Wayne Barnett and Detective Paul Smith—testified about their experience in the way in which methamphetamine is normally packaged and sold. Detective Smith stated that based upon his experience as a narcotics officer, the quantity of the drugs (in excess of fifteen ounces) and their quality (sixty-seven to sixty-eight percent pure methamphetamine), indicated to him an individual who was trafficking in narcotics. The Arkansas Supreme Court stated that such testimony was proper given that the State bore the burden of proving that Marts II had possessed the methamphetamine with the intent to deliver it.

**EVIDENCE - VIDEO
TAPE OF INTOXICATED
SUBJECT**

In *Springston v. State*, CACR 97-539, 2/25/98, Richard Springston contended that it was error to allow the jury to view a videotape filmed at the Paragould Police Department which depicted him, while in handcuffs, as angry and argumentative, using profanity and refusing the breathalyzer test.

The Arkansas Court of Appeals found no merit in Springston's argument and upheld his lower court conviction. The Court stated that the balancing of

probative value against prejudice is a matter left to the sound discretion of the trial court, and this decision will not be reversed absent a showing of manifest abuse. *Hill v. State*, 325 Ark. 419, 931 S.W.2d 64 (1996). The prejudice referred to “. . . denotes the effect of the evidence on the jury, not the party opposed to it.” *Sasser v. State*, 321 Ark. 438, 902 S.W.2d 773 (1995). Since intoxication is an essential element of the crime in this case, evidence that shows the demeanor of the accused at or near the time of the offense is highly relevant to that issue. The fact that the evidence may have also portrayed Springston in an unfavorable light does not constitute the kind of unfair prejudice that would require its exclusion at trial.

**FIFTH AMENDMENT -
COMPELLED
TESTIMONY**

In *Ohio Adult Parole Authority v. Woodard*, No. 96-1769, 3/25/98, the Ohio Adult Parole Authority commenced a clemency investigation in accordance with state law. Woodard, who had been convicted of murder and received a death sentence, was informed that he could have his voluntary interview with the Parole Authority on a particular date and that his clemency hearing would be held a week later. Woodard filed suit under 42 U.S.C. § 1983 alleging that Ohio's clemency process violated his Fourteenth Amendment due process rights and his Fifth Amendment right to remain silent.

The United States Supreme



Court rejected Woodard's claim—that nothing in the clemency process grants applicants immunity for what they might say or makes the interview in any way confidential, and that the Parole Authority will draw adverse inferences from his refusal to answer questions—and therefore his testimony at a voluntary interview would be compelled. The Court indicated that Woodard merely faces a choice of providing information to the Parole Authority—at the risk of damaging his case for clemency or for postconviction relief—or of remaining silent, but the pressure to speak does not make the interview compelled.

The Court also indicated that, while pardon and commutation decisions are rarely, if ever, appropriate for judicial review, some minimal procedural safeguards apply to clemency proceedings.

FREEDOM OF INFORMATION ACT

In *Stilley v. McBride*, 97-628, 3/19/98, Stilley, an attorney, filed a § 1983 action in federal court against two Fort Smith Police Officers, Patricia Sullivan and Ronald Pippen. Stilley sought to obtain the officers' home addresses from their personnel records from Wanda McBride, a City of Fort Smith employee. Stilley wanted the addresses, so he could serve the officers by mail, which was cheaper than having them served in person. When McBride refused Stilley's request, Stilley immediately reduced his request to writing, demanding the addresses pursuant to the Arkansas Freedom of Information (FOI)

Act. On the same day, the Fort Smith City Attorney, Stanley A. Leasure, by letter, denied Stilley's demand, and stated the records requested were exempt from disclosure under § 25-19-105(b) (10) of the FOI Act. That provision provides that personnel records are not open to the public if their disclosure would constitute a "clearly unwarranted invasion of personal privacy." Six days later Stilley filed a lawsuit in circuit court seeking Sullivan's and Pippin's home addresses. The circuit court held that the officers' home addresses were exempt from disclosure because the information is a clearly unwarranted invasion of personal privacy. Stilley appealed.

The Arkansas Supreme Court in affirming the trial court decision, held that Stilley's sole reason for requesting Officers Sullivan's and Pippin's addresses was to utilize a cheaper method of obtaining service of process on the officers. The purpose of the FOI is to keep electors advised of the performance of their public officials. The reason given by Stilley for requesting home addresses of police officers—has little or nothing to do with learning about or reporting the officer's activities. Stilley's request was triggered largely by his intent to save a few dollars in serving process and not to learn about or report on those officers' activities. For these reasons, the Arkansas Supreme Court upheld the circuit court's decision denying Stilley's FOI request for the home addresses of the officers.



LOCAL OFFICIALS - LEGISLATIVE IMMUNITY

In *Bogan v. Scott-Harris*, No. 96-1569, 3/3/98, the United States Supreme Court, in a 42 U.S.C. § 1983, action stated that the acts of local officials in introducing, voting for and signing an ordinance constituted legislative activities for which they were entitled to absolute immunity from civil liability.

SEARCH AND SEIZURE - CURTILAGE

In *United States v. Mooring*, No. 97-2682EA, 2/25/98, the issue before the Eighth Circuit Court of Appeals was whether or not a barn on a farm owned by James L. and Cheryl D. Mooring was within the farmhouse's curtilage. The Eighth Circuit Court reviewed relevant factors that might be examined to determine whether or not a building was within the curtilage and concluded in this case that the barn was not within the curtilage.

The Eighth Circuit Court of Appeals stated that in deciding whether the Moorings' barn was within their farmhouse's curtilage, the central component the court considers is whether the barn harbored the intimate activity associated with the sanctity of the Moorings' farmhouse and the privacies of their life. Several factors are relevant to the decision; the proximity of the barn to the farmhouse, whether the farmhouse and barn are within the same enclosure, the nature and uses of the barn, and the steps the Moorings took to pro-



tect the barn from being seen by others. These factors are not applied mechanically, but are used to consider if the Moorings' barn is so intimately tied to the farmhouse itself that the barn should be placed under the farmhouse's umbrella of Fourth Amendment protection.

SEARCH AND SEIZURE - GARBAGE

In *U.S. v. Redmon*, CA7 (en banc), No. 96-3361, 3/10/98, on rehearing in 117 F.3d 1036, the Seventh Circuit Court of Appeals held that the warrantless search of Redmon's garbage cans did not violate his Fourth Amendment rights. Urbana, Illinois police officers searched Redmon's garbage and seized cocaine accessories from his garbage cans before the garbage was collected. Based on the evidence located inside the garbage cans, a search warrant was obtained for Redmon's residence. The residence search resulted in the seizure of 415 grams of cocaine.

Redmon first claimed that the garbage cans were within the curtilage of his home. The Seventh Circuit disposed of this argument by stating that Redmon's garbage cans did not appear to be within the curtilage as defined as an area intimately associated with the sanctity of the house and the privacies of life. The Seventh Circuit stated further that other factors—ready accessibility of the garbage cans to the public, the short distance between the garbage cans and the sidewalk, collection by a garbage service, and particu-

larly that the cans were clearly visible from the sidewalk—in addition to curtilage, must be considered in determining that there is no protected privacy interest in the garbage cans.

Redmon also argued that there was an expectation of privacy in the garbage. To be sure, Redmon did not expect the contents of his garbage cans to become known to the police or other members of the public. The Seventh Circuit stated that that alone is not enough to give rise to Fourth Amendment protection. The Court concluded by stating that there was no constitutionally protected interest in the contents of Redmon's garbage cans. Redmon's own carelessness in his use of his garbage cans in trying to dispose of the evidence of his criminal conduct caused his problem. He cannot now blame the vigilant police. Thus the search warrant for Redmon's house was valid.

SEARCH AND SEIZURE - INVENTORY OF A VEHICLE PURSUANT TO WRITTEN DEPARTMENTAL POLICY

In *Thompson v. State*, No. CR 98-76, 4/30/98, the sole issue on appeal is whether the trial court erred when it denied Thompson's motion to suppress evidence found during an inventory search of his car.

On August 14, 1996, at approximately 10:00 p.m., Officer Walter stopped Thompson's vehicle because the tail lights were not working. Officer Walter cited

Thompson for not having a valid driver's license or proof of insurance and issued him a warning for the malfunctioning tail lights. Thompson was not placed under arrest. Officer Walter then attempted to contact two or three of Thompson's friends in an effort to find someone to drive Thompson and his vehicle home. After these efforts proved unsuccessful, Officer Walter informed Thompson that he could not leave the car on the side of the highway because it would create a safety hazard and the car could be vandalized. Therefore, the car would have to be impounded and its contents inventoried.

Thompson assisted Officer Walter in the inventory of his vehicle. Officer Walter briefly looked in the front seat of the car with his flashlight and did not see "anything obvious" to inventory. Thompson then opened the hatchback of his car, and assisted Officer Walter in the inventory of the items contained in a tool box and a wooden box. As the two men were looking through the wooden box, Thompson asked Officer Walter if he could remove some of the items. Officer Walter responded in the affirmative and advised Thompson that even the items removed from the car would have to be inventoried. Thompson proceeded to remove some books and an eyeglass case. Officer Walter told Thompson that he would have to look inside the eyeglass case to inventory the property contained therein and to insure that the case did not contain a small weapon. Thompson handed the eyeglass case to Officer Walter and exclaimed: "I'm busted. Can I bond out tonight?"



Officer Walter opened the eyeglass case and found several plastic bags containing methamphetamine.

Officer Walter immediately placed Thompson under arrest and secured him in the back seat of the police car. Officer Walter then returned to the vehicle and resumed his search. Officer Walter looked further and discovered drug paraphernalia, a bong with residue, marijuana and a razor blade. On the driver's side floorboard Officer Walter found a small leather purse that contained more drugs and paraphernalia.

Prior to trial, Thompson filed a motion to suppress the evidence seized from his vehicle. During the suppression hearing, Officer Walter explained that it was a standard procedure in his department to impound a vehicle and inventory its contents if the officer could not find someone to drive the vehicle for a person who did not possess a valid license. Officer Walter then testified that it was "normal procedure" to "inventory everything inside the vehicle once the inventory is started," and that he normally inventoried "every possession of a car." The State then introduced the following written policy which is contained in the Benton County Sheriff's "Policy and Procedures" manual:

504 Impound If you make a physical custody arrest out of a vehicle, you may not leave the vehicle unattended. It is up to the officer's discretion to allow someone else to drive the vehicle (with the owner's permission); however, if this is not done, it must be

impounded. . . When you impound, you will conduct an inventory. This is done for the violators protection as well as your own and the department's. You will inventory all items in the vehicle, including locked or unlocked containers.

The trial court concluded that Officer Walter was credible, and that he reasonably decided to impound and inventory Thompson's vehicle pursuant to the written policy which passed constitutional muster. Accordingly, the court denied Thompson's motion to suppress. Thompson then entered a conditional guilty plea to the crimes of possession of a controlled substance and possession of drug paraphernalia.

In an unpublished opinion, the Court of Appeals reversed and remanded Thompson's conviction because it concluded that the trial court should have suppressed the evidence seized from the Thompson's car. *Thompson v. State*, CACR97-726 (Ark. Ct. App. Jan. 21, 1998). The Arkansas Supreme Court granted the State's petition for review, and consider this case as though it were originally filed in this court.

Neither party contests the legality of the traffic stop. Instead, Thompson argues that Officer Walter had no legal basis for performing the inventory search or, in the alternative, that he exceeded the scope of a permissible inventory search when he looked inside the eyeglass case. The Arkansas Supreme Court found no merit to these arguments.

It is well settled that police officers may conduct a warrantless

inventory search of a vehicle that is being impounded in order to "protect an owner's property while it is in the custody of the police, to insure against claims of lost, stolen or vandalized property, and to guard the police from danger." *Colorado v. Bertine*, 479 U.S. 367 (1987); see also *Welch v. State*, 330 Ark. 158, 955 S.W.2d 181 (1997). An inventory search, however, may not be used by the police as a guise for "general rummaging" for incriminating evidence. *Florida v. Wells*, 495 U.S. 1 (1990); *Welch v. State*, supra. Hence, the police may impound a vehicle and inventory its contents only if the actions are taken in good faith and in accordance with standard police procedures or policies. See *Colorado v. Bertine*, supra; *Florida v. Wells*, supra; *Welch v. State*, supra. In *Welch v. State*, supra, the Arkansas Supreme Court clarified that these standard procedures do not have to be in writing, and that they may be established by an officer's testimony during a suppression hearing. In accordance with these principles, Arkansas Rules of Criminal Procedure, Rule 12.6, states that:

A vehicle impounded in consequence of an arrest, or retained in official custody for other good cause, may be searched at such times and to such extent as is reasonably necessary for safekeeping of the vehicle and its contents.

I. No Arrest

First, Thompson argues that Officer Walter did not have the authority to perform an inventory



search because Benton County Policy 504 refers only to inventories of vehicles that are impounded pursuant to an arrest. However, Rule 12.6 of the Arkansas Rules of Criminal Procedure is broader than Policy 504, allows an officer to impound a vehicle and inventory its contents for “any good reason.” Moreover, Arkansas case law establishes that it is permissible for an officer to impound and inventory a vehicle when the driver is physically unable to drive the car, and leaving it on the side of the road would create a safety hazard. *Asher v. State*, 303 Ark. 202, 795 S.W.2d 350 (1990); *Kirk v. State*, 38 Ark. App. 159, 832 S.W.2d 271 (1992). The only difference between the case at hand, and *Asher* and *Kirk* is that Thompson was legally, not physically, “unable” to drive his car because he did not have a valid driver’s license. Finally, Officer Walter testified at the suppression hearing that it was a standard practice in his department to impound and inventory vehicles under such circumstances. For these reasons, the Arkansas Supreme Court held that Officer Walter was justified in impounding Thompson’s vehicle and completing an inventory of its contents.

II. Opening Closed Containers

The next issue is whether Officer Walter exceeded the bounds of a permissible inventory search when he opened Thompson’s eyeglass case. In *Florida v. Wells*, 495 U.S. 1 (1990), the United States Supreme Court held that the police may open containers during an inventory search if the department has a standard procedure allowing such

conduct. In accordance with *Florida v. Wells*, supra, the Arkansas courts have consistently held that an officer may open a closed container during an inventory search when there is some evidence that the officer did so pursuant to a standard policy. *Welch v. State*, 330 Ark. 158, 955 S.W.2d 181 (1997); *Snell v. State*, 290 Ark. 503, 721 S.W.2d 628 (1986); *Kirk v. State*, 38 Ark. App. 159, 832 S.W.2d 271 (1992); *Folly v. State*, 28 Ark. App. 98, 771 S.W.2d 306 (1989).

As previously mentioned, Policy 504 declares that: “You will inventory all items in the vehicle, including locked or unlocked containers.” By referring to locked and unlocked containers, it is clear that this standard policy requires officers to open the containers instead of recording the unopened containers as a unit. Because Officer Walter was acting in accordance with a standard police procedure when he opened the eyeglass case, and there was no evidence of bad faith, the Arkansas Supreme Court held that he did not exceed the permissible bounds of an inventory search when he opened the closed container.

III. Items Removed from the Car

Thompson further argues that once he removed the eyeglass case from the vehicle, it was no longer subject to being inventoried. The Arkansas Supreme Court disagreed. As previously explained, an inventory search is conducted for the dual purpose of protecting the owner’s property and the police from false claims of theft or vandalism. See *Colorado v.*

Bertine, supra; *Welch v. State*, supra. Accordingly, Rule 12.6 of the Arkansas Rules of Criminal Procedure provides that an officer may conduct the inventory to the extent “reasonably necessary for safekeeping of the vehicle and its contents,” and Policy 504 declares that officers “will inventory all items in the vehicle.”

Officer Walter was in the midst of the inventory and exercised some dominion and control over the eyeglass case before he allowed Thompson to remove it from the wooden box located inside the hatchback area. Under such circumstances, the Arkansas Supreme Court stated they would find it reasonable that Officer Walter would need to record the contents of the case to protect himself from a possible claim that he removed, damaged, or destroyed the contents before he handed it over to Thompson. Moreover, Officer Walter’s actions were in accordance with the standard police procedure of inventorying all items found in the vehicle. Based on the limited facts of this case, it was held that Officer Walter did not violate Thompson’s Fourth Amendment rights when he opened the eyeglass case.

For the foregoing reasons, the Arkansas Supreme Court upheld the inventory of Thompson’s vehicle.





**SEARCH AND SEIZURE -
“NO KNOCK” ENTRY
AND PROPERTY
DESTRUCTION**

In *United States v. Ramirez*, No. 96-1469, 3/4/98, the United States Supreme Court had to decide the standard to which officers are held when a “no-knock” entry results in the destruction of property.

Alan Shelby was a prisoner serving concurrent state and federal sentences in the Oregon State prison system. On November 1, 1994, the Tillamook County Sheriff’s Office took temporary custody of Shelby, expecting to transport him to the Tillamook County Courthouse, where he was scheduled to testify. On the way to the Courthouse, Shelby slipped off his handcuffs, knocked down a deputy sheriff, and escaped from custody.

It was not the first time Shelby had attempted escape. In 1991 he struck an officer, kicked out a jail door, assaulted a woman, stole her vehicle, and used it to ram a police vehicle. Another time he attempted escape by using a rope made from torn bedsheets. He was reported to have made threats to kill witnesses and police officers, to have tortured people with a hammer, and to have said that he would “not do federal time.” It was also thought that Shelby had access to large supplies of weapons.

Shortly after learning of Shelby’s escape, the authorities sent out a press release, seeking information that would lead to his recapture. On November 3, a reliable confidential informant told

ATF Agent George Kim that on the previous day he had seen a person he believed to be Shelby at respondent Hernan Ramirez’s home in Boring, Oregon. Kim and the informant then drove to an area near respondent’s home, from where Kim observed a man working outside who resembled Shelby.

Based on this information, a Deputy U. S. Marshal sought and received a “no-knock” warrant granting permission to enter and search Ramirez’s home. Around this time, the confidential informant also told authorities that respondent might have a stash of guns and drugs hidden in his garage. In the early morning of November 5, approximately 45 officers gathered to execute the warrant. The officers set up a portable loud speaker system and began announcing that they had a search warrant. Simultaneously, they broke a single window in the garage and pointed a gun through the opening, hoping thereby to dissuade any of the occupants from rushing to the weapons the officers believed might be in the garage.

Ramirez and his family were asleep inside the house at the time this activity began. Awakened by the noise, Ramirez believed that they were being burglarized. He ran to his utility closet, grabbed a pistol, and fired it into the ceiling of his garage. The officers fired back and shouted “police.” At that point Ramirez realized that it was law enforcement officers who were trying to enter his home. He ran to the living room, threw his pistol away, and threw himself onto the floor. Shortly thereafter, he, his wife, and their child left the house and were taken into police

custody. Ramirez waived his Miranda rights, and then admitted that he had fired the weapon, that he owned both that gun and another gun that was inside the house, and that he was a convicted felon. Officers soon obtained another search warrant, which they used to return to the house and retrieve the two guns. Shelby was not found.

Ramirez was subsequently indicted for being a felon in possession of firearms. The District Court granted his motion to suppress evidence regarding his possession of the weapons, ruling that the police officers had violated the Fourth Amendment because there were “insufficient exigent circumstances” to justify the police officer’s destruction of property in their execution of the warrant. The Court of Appeals for the Ninth Circuit affirmed concluding that while a “mild exigency” is sufficient to justify a no-knock entry that can be accomplished without the destruction of property, “‘more specific inferences of exigency are necessary’ “ when property is destroyed. It held that this heightened standard had not been met on the facts of this case. The United States Supreme Court granted certiorari and reversed the lower courts decisions.

In *Wilson v. Arkansas*, 514 U.S. 927, (1995), the Court reviewed the Arkansas Supreme Court’s holding that the common-law requirement that police officers knock and announce their presence before entering played no role in Fourth Amendment analysis. The Court rejected that conclusion, and held instead that “in some circumstances an officer’s unannounced entry into a home might



be unreasonable under the Fourth Amendment.” The court was careful to note, however, that there was no rigid rule requiring announcement in all instances, and left “to the lower courts the task of determining the circumstances under which an unannounced entry is reasonable under the Fourth Amendment.”

In *Richards v. Wisconsin*, 520 U. S. ___ (1997), the Wisconsin Supreme Court held that police officers executing search warrants in felony drug investigations were never required to knock and announce their presence. The United States Supreme Court concluded that this blanket rule was overly broad and held instead that in order to justify a “no-knock” entry, the police must have a reasonable suspicion that knocking and announcing their presence, under the particular circumstances, would be dangerous or futile, or that it would inhibit the effective investigation of the crime by, for example, allowing the destruction of evidence.

Neither of these cases explicitly addressed the question whether the lawfulness of a “no-knock” entry depends on whether property is damaged in the course of the entry. It is obvious from their holdings, however, that it does not. Under *Richards*, a no-knock entry is justified if police have a reasonable suspicion that knocking and announcing would be dangerous, futile or destructive to the purposes of the investigation. Whether such a reasonable suspicion exists depends in no way on whether police must destroy property in order to enter.

This is not to say that the Fourth Amendment speaks not at all to the manner of executing a

search warrant. The general touchstone of reasonableness which governs Fourth Amendment analysis, see *Pennsylvania v. Mimms*, 434 U.S. 106, 108-109 (1977), governs the method of execution of the warrant. Excessive or unnecessary destruction of property in the course of a search may violate the Fourth Amendment, even though the entry itself is lawful and the fruits of the search not subject to suppression.

Applying these principles to the facts at hand, the Court concluded that no Fourth Amendment violation occurred. A reliable confidential informant had notified the police that Alan Shelby might be inside respondent’s home, and an officer had confirmed this possibility. Shelby was a prison escapee with a violent past who reportedly had access to a large supply of weapons. He had vowed that he would “not do federal time.” The police certainly had a “reasonable suspicion” that knocking and announcing their presence might be dangerous to themselves or to others.

As for the manner in which the entry was accomplished, the police here broke a single window in Ramirez’s garage. They did so because they wished to discourage Shelby, or any other occupant of the house, from rushing to the weapons that the informant told them Ramirez might keep there. Their conduct was clearly reasonable and there is no Fourth Amendment violation.



SEARCH AND SEIZURE - VEHICLE SEARCH INCIDENT TO ARREST

In *Fultz v. State*, CR 97-1129, 4/22/98, Fultz was arrested pursuant to an arrest warrant outside his home but in his carport. When he was searched, the arresting officers located marijuana in his pocket. When asked if he had any guns, he said yes and said he thought a derringer might be in his car. The Arkansas Supreme Court stated that at this point officers had found marijuana on Fultz’s person, knew he probably had a gun in his nearby parked car, and they also had two-day old information that Fultz used his car to transport drugs. The officers then conducted a warrantless search of the vehicle and found a MAK-90 rifle and an illegal sawed-off shotgun in the hatchback portion of Fultz’s Pontiac Firebird.

Fultz attacked the validity of the officers’ warrantless search that produced the firearms which were used to convict him of two charges of simultaneous possession of controlled substances and criminal use of a prohibited weapon. Fultz contended that the vehicle search violated the Fourth Amendment as set out by the United States Supreme Court in *Coolidge v. New Hampshire*, 403 U.S. 433 (1971). In that case officers arrested Coolidge in his home and then searched his vehicle which was parked in his driveway. The search was conducted pursuant to a defective search warrant. In an attempt to save that search it was argued that the officers could search the vehicle incidental to arrest. The Su-



preme Court held that the search-incident doctrine had no applicability to the circumstances in Coolidge's situation because Coolidge was arrested inside his house while his car was outside in his driveway. In other words, Coolidge had no access to his car. The Court adhered to the standards announced in *United States v. Rabinowitz*, 339 U.S. 56 (1950), that a search may be incident to an arrest only if it is substantially contemporaneous with the arrest and is confined to the immediate vicinity of the arrest. See also *Chimel v. California*, 395 U.S. 752 (1969).

The Arkansas Supreme Court first cited the Arkansas Rules of Criminal Procedure, Rule 12.4(a) and (b) which reads as follows:

(a) If, at the time of the arrest, the accused is in a vehicle or in the immediate vicinity of a vehicle of which he is in apparent control, and if the circumstances of the arrest justify a reasonable belief on the part of the arresting officer that the vehicle contains things which are connected with the offense for which the arrest is made, the arresting officer may search the vehicle for such things and seize any thing subject to seizure and discovered in the course of the search.

(b) The search of the vehicle pursuant to this rule shall only be made contemporaneously with the arrest or as soon thereafter as is reasonably practicable.

Fultz contended that even though he was standing close to the car when he was arrested, it was not reasonable to conclude that the interior of his car was within his immediate control. The rule, of course, required him to be in the "immediate vicinity" of his vehicle of which he was in "apparent control." The evidence reflects these factors were met, along with a proof showing that the arresting officers had a reasonable belief that Fultz's car contained drugs and a gun, since they knew Fultz used the car to transport drugs and he told the officers he thought one of his guns—a derringer—was in the parked car.

The Court concluded that the warrantless search of Fultz's car was valid and sustained the two convictions.

SEARCH WARRANT AFFIDAVITS

In *Langford v. State*, CR 97-976, 2/26/98, Officer Stephen Brown of the Fifth Judicial Drug Task Force applied for a warrant to search the residence of Mark Lanford for various drugs, drug paraphernalia, drug money, related drug documents, and weapons. In support of his application for a warrant, Officer Brown submitted his affidavit and the affidavit of Mary Duncan. In his affidavit, Officer Brown stated that on September 24, 1993, he received information from two confidential informants that Langford was providing methamphetamine for sale and distribution to Doyle Gray and Kathy Buchanan, also known as Mary Duncan. In addition, Officer

Brown detailed a controlled drug buy that he had arranged for the evening of September 28, 1993. He recounted that the two informants went to Mary Duncan's residence to attempt to buy an "eight ball" of methamphetamine, and, while under police surveillance, Duncan went to appellant's residence and then returned to her home where she delivered an eight ball to the informants. Officer Brown further stated that a subsequent field test on the eight ball revealed methamphetamine.

Langford, who was convicted in Faulkner County Circuit Court on drug charges, was sentenced to two forty-year prison terms and two ten-year prison terms. Langford appealed his conviction to the Arkansas Supreme Court and argued that the affidavit for the search warrant did not meet the requirement of Arkansas Rules of Criminal Procedure, Rule 13.1(b) because it failed to set forth particular facts bearing on the informants' reliability and failed to disclose the basis of the informants' beliefs that Langford was involved in illegal drug activity.

With respect to the informants' reliability, Officer Brown's affidavit contained the following statements:

CI-A and CI-B have both provided information against their penal interest and both had provided information about other drug violators, which has been verified through affiant's personal knowledge, as well as intelligence received and placed in case files of the Fifth Judicial Drug Task Force. Both informants have provided information which led to the subsequent arrest and prosecution of violators.



The Court stated that although Officer Brown did not provide specific details about the informants' assistance in previous drug cases, he stated more than a mere conclusion and disclosed enough information to show that the informants were worthy of belief. See *Akins v. State*, 264 Ark. 376, 572 S.W.2d 140 (1978).

In addition, under Rule 13.1(b), failure to establish the basis of knowledge of the confidential informants is not a fatal defect "if the affidavit viewed as a whole provides a substantial basis for a finding of reasonable cause to believe that things subject to seizure will be found in particular places." *Heard v. State*, 316 Ark. 731, 736-37, 876 S.W.2d 231, 234 (1994), (quoting *Mosley v. State*, 313 Ark. 616, 622, 856 S.W.2d 623, 626 (1993)). Here, Officer Brown's affidavit, viewed as a whole, provided a substantial basis to believe that drugs and other contraband would be found at Langford's residence. Officer Brown's personal account of the controlled drug buy established that the informants went to Mary Duncan's residence to purchase methamphetamine with marked money, that Duncan left her house and went to Langford's residence to get the eight ball for the informants, that she returned to her house where she gave the drugs to the informants, that she was under surveillance during this time, and that the drugs tested positive for methamphetamine. Officer Brown's affidavit also established that the informants had been searched for drugs before they went to Duncan's residence and that none were found. Based on this information alone, the Court

concluded that Officer Brown's affidavit provided a substantial basis for a finding of reasonable cause to believe that drugs and other contraband would be found at appellant's residence.

Langford also contends that the affidavits for the search warrant contained an insufficient factual basis to justify a search at night. Officer Brown listed four "exigent circumstances" in support of his application for a nighttime warrant to search Langford's residence:

(1) There are currently drugs at the Mack Langford residence, which are packaged and maintained in a manner that their destruction or removal can be easily accomplished.

(2) Mack Langford has threatened CI-B with a semi-automatic pistol within the last week and is, therefore, believed to be armed and dangerous, thus making the element of surprise inherent with a nighttime search essential for the safety of the officers executing the warrant.

(3) Affiant has information that Mack Langford will be leaving the morning of 29 September 1993, thus giving rise to affiant's belief that the drugs will be removed, hidden or otherwise disposed of.

(4) The location of the residence is such as to make speedy access impossible in that it sits on a hill overlooking the road, which provides the only access to the property.

After a careful review of the affidavits presented in this case, the Court determined that, under the totality of the circumstances, the trial court's decision to deny the motion to suppress evidence seized in the nighttime search was not clearly against the preponderance of the evidence. The affidavits set forth information that Duncan, while under police surveillance, purchased drugs for the confidential informants at the appellant's residence on the evening of September 28, 1993; that Duncan bought the drugs with marked money; that Duncan had seen drug paraphernalia and firearms at appellant's residence within the previous week; that appellant was leaving his residence sometime the morning of the September 29; that appellant had threatened one of the informants with a weapon within the last week; and that the location of the residence made speedy access impossible. Based on this information, the Court held that there was a sufficient factual basis for a nighttime search.

SEXUAL HARASSMENT - SAME SEX

In *Oncale v. Sundowner Offshore Services, Inc.*, 96-568, 3/4/98, the United States Supreme Court held that workplace harass-



ment can violate Title VII's prohibition against discrimination because of sex when the harasser and the harassed employee are of the same sex.

STOP AND FRISK

In *Shaver v. State*, CR 97-520, 2/26/98, the Arkansas Supreme Court considered the appeal of John Wesley Shaver who contended that the trial court erred in failing to grant his motion to suppress evidence recovered as a result of an unlawful search and seizure. The Arkansas Supreme Court affirmed the trial court's ruling.

Shaver's arrest ensued from incidents that occurred at 2:40 a.m. on July 7, 1996. Greg Henry was driving Shaver's truck 76 miles per hour in a 55-mile-per-hour zone when Officers Larry Mitchell and Phillip Hydron stopped Henry for speeding. Shaver was a passenger in his truck. After Henry exited the vehicle and gave his driver's license to Officer Mitchell, Mitchell saw what appeared to be leather straps next to the passenger seat, and noticed that Shaver was seated with an old tee shirt or towel over his lap. Mitchell asked Henry if there were any weapons in the vehicle, and Henry responded, saying that Shaver had two. Mitchell then alerted Officer Hydron of the presence of the guns and asked him to remove Shaver from the truck. Hydron obliged, had Shaver place his hands on the truck, and began to pat him down. As Hydron reached to pat Shaver down, he noticed a bulge in Shaver's front pocket. At the same

time, Shaver "bowed up," causing Hydron to press him against the truck and to tell Shaver to calm down and keep his hands on the truck. Officer Hydron then decided to reach inside Shaver's pocket to determine what caused the bulge. Hydron pulled out a bag of white powdery substance, and he told Officer Mitchell that "it looks like we have discovered contraband." Hydron continued to pull out a substance that he suspected was methamphetamine from both of Shaver's pockets. Hydron testified that, initially, he had no idea what was in Shaver's pockets, but only knew there was a "big bulge." Hydron said that the bulge did not feel like a weapon, but added he was uncertain what the contents were. On cross examination, Hydron related that his intent was to pull everything out of Shaver's pockets, regardless.

Recently, the Supreme Court held that an officer making a traffic stop may order passengers to get out of the vehicle pending completion of the stop. *Maryland v. Watson*, 519 U.S. ____, 117 S.Ct. 882 (February 19, 1997); see also *Wright v. State*, 327 Ark. 558, 940 S.W.2d 432 (1997). After a lawful stop, the police are permitted to search the outer clothing of an individual and the immediate vicinity for weapons if the facts available to an officer would warrant a person of reasonable caution to believe that a limited search was appropriate. *State v. Barter*, 310 Ark. 94, 833 S.W.2d 372 (1992); *Stout v. State*, 304 Ark. 610, 804 S.W.2d 686 (1991); Arkansas Rules Criminal Procedure, Rule 3.4.

Shaver relies heavily on *Min-*

nesota v. Dickerson, 508 U.S. 366 (1993), for his argument that Hydron's patdown of him exceeded the lawful bounds of *Terry v. Ohio*, 395 U.S. 1 (1968). In *Dickerson* the Supreme Court considered the question of whether police officers may seize non-threatening contraband detected during a protective patdown search of the sort permitted by *Terry*. The Court determined that officers may do so, as long as their search stays within the bounds of *Terry*. In its review of *Dickerson's* case, the Supreme Court held that the officer overstepped his bounds because the officer's continued exploration of Dickerson's pocket, after having concluded that it contained no weapon, was unrelated to the sole justification of the search under *Terry* — the protection of the police officers and others nearby.

The Arkansas Supreme Court did not agree that the *Dickerson* holding was controlling here. The trial court found Officers Mitchell and Hydron credible when describing their traffic stop of Shaver's truck and subsequent patdown of Shaver, and concluded the actions taken were reasonable to ensure their safety. The officers became immediately aware that Shaver had two weapons inside the stopped vehicle, and Officer Mitchell had seen a leather holster next to where Shaver was seated. Mitchell also saw Shaver had a tee shirt or towel in his lap. After Shaver was directed to get out of the truck, and when Officer Hydron commenced a patdown, Shaver "bowed up," causing Hydron to tell him to "calm down" and again place his hands on the truck. Because of these actions



and events, the trial court found it was reasonable for Hydron to reach into Shaver's pockets to determine what was causing the bulges. The trial court further concluded that, although Hydron felt a plastic bag with a rock-like substance in it, the officer still was unaware of what else was in Shaver's pocket because he could not feel the entire contents of his pocket. The trial court ruled this uncertainty of Hydron as to what else was in Shaver's pocket was sufficient reason with all other circumstances for Hydron to search Shaver's pocket.

In his argument, Shaver places emphasis on Hydron's testimony that, when he searched Shaver's pocket, the bulge "did not feel like a weapon" and that his "intent was to pull everything out of Mr. Shaver's pockets, regardless." In doing so, however, he ignores the circumstances leading to the patdown of Shaver – that guns were present, Shaver was seen next to a leather holster with a tee shirt or towel in his lap, and Shaver appeared "a bit agitated" and was ordered to "calm down." To ensure the officers' safety, Officer Hydron felt compelled to check the "big bulge" in Shaver's pocket, and while, in doing so, he found a bag of white powdery substance, Hydron remained uncertain regarding what else was in Shaver's pockets. Under these described circumstances, the Arkansas Supreme Court could not say the trial court was clearly wrong in finding Officer Hydron was justified in conducting a limited search to determine that Shaver had no weapon on his person.

Justice Newbern and Justice

Imber dissented, arguing that a *Terry* frisk is justified by the need to protect law enforcement officers and is designed to discover guns, knives, clubs, or other hidden instruments for an assault on the officer. The testimony indicated that the "bulge" in Mr. Shaver's pocket was not a weapon and the entry into the pocket was not reasonably related to the circumstances which provoked the protective search for weapons. They were of the opinion that the seized evidence should have been suppressed.

ADDENDUM

This issue of the CJI Legal Briefs contains a discussion of the United States Supreme Court decision in *Gray v. Maryland*, No. 96-8653, 3/9/98, which deals with a confession where more than one individual is involved in the criminal activity. This case is important to detectives, investigators, and law enforcement officers who conduct interviews in criminal cases. You should consult with your agency's legal advisor regarding this case. The following information is being set forth in order for you to more fully discuss the *Bruton* and *Gray* cases with your appropriate legal advisor. It is important to remember that historically a confession was considered hearsay but could be admitted against the person giving the confession on the legal theory that presumes that whatever a person says against his own interest is true. While conspiracy law has exceptions, the general statement can be made that one man's confession is not admissible against

another.

The *Bruton* statement issue comes about when two or more criminals are tried as defendants in a joint trial, and the statement of one of them is offered against him even though its contents implicate other defendants. In 1968, the Supreme Court in *Bruton v. United States*, 391 U.S. 123, stated the basic constitutional doctrine involved is the right to confrontation, i.e., evidence against the second defendant is offered, in the form of the first defendant's confession, yet because of the privilege against self-incrimination the second defendant cannot call the first to the stand. Therefore, receipt of one codefendant's confession impaired the right of confrontation and cross-examination on the part of others implicated in that confession.

From an investigative viewpoint, this means that a confession implicating another defendant is not permissible to offer into evidence. A written confession involving two or more subjects who may be tried jointly should contain a paragraph between the introductory statement and the opening paragraph of full details of the crime. This paragraph should contain only those admissions which relate solely to the confessing party's guilt making no reference to participation of other subjects. In a joint trial, only that portion of the statement which solely incriminates the individual who made the confession would be offered in evidence without prejudice to any rights of codefendants. The following would be an example of this type of statement.



Little Rock, Arkansas

June 1, 1998

I, Dastardly Dan, make the following voluntary statement to Dudley Doright who has identified himself to me as a Detective with the Little Rock, Arkansas Police Department. Mr. Doright provided me with a Warning and Waiver Form, explained this form to me and I have read and executed this form. The following is a voluntary statement which I am making to Detective Doright.

I participated in the robbery of the Last National Bank of Little Rock, Little Rock, Arkansas, on June 1, 1998. I wore a red and white mask over my face and carried a black revolver. My job was to drive the getaway car. I parked it in front of the bank and drove it away after the robbery was completed. I left the car at the corner of University Avenue and Asher Avenue in Little Rock, Arkansas. My share of the loot was \$ 2,000.00 in \$ 20 dollar bills.

I was born on 4/8/73, at Little Rock, Arkansas, where I now reside. I graduated from high school in June, 1991, and since that time I have been employed by the XYZ Corporation as a welder.

On the evening of May 1, 1998, I met Billy Bad at the Lively Lounge in Little

Rock, Arkansas. Billy and I were classmates in high school and later worked together at the XYZ Corporation. We both needed money because . . . etc.

In the case of a joint trial the first two paragraphs could be offered against Dastardly Dan without implicating his partner, Billy Bad, in any manner. One other possibility, utilized by experienced investigators, is to take a complete written confession from the subject which implicates all individuals in the crime and sets forth the complete details of the criminal activity. Thereafter, a separate shorter signed statement which does not implicate any other defendant in any manner is taken from the subject being interviewed.

A failure to follow this practice in taking signed statements may result in the loss of a written confession at least as it pertains to a codefendant.

If you have any questions or comments about the information presented in this newsletter, please call the following staff members at CJI:

Don Kidd, J.D.
B. J. Houston, J.D.
Al Berndt, J. D.



**Reach us
 on the
 Internet
 at
[http://
 www.cji.net](http://www.cji.net)**