FRONT Report LINE

August 2004 OFFICE OF MISSOURI ATTORNEY GENERAL Vol. 11, No. 2

New law requires photos of seized evidence

A new law that takes effect Aug. 28 requires police officers to photograph and make copies of all seized evidence when executing a search warrant.

All agencies are encouraged to comply with this mandate and to seek advice from their prosecutor on how the new law will impact the execution of warrants.

Section 542.276 has been amended to require that search warrants now command that any of the "described property, article, material, substance or person found thereon or therein be seized and **photographed or copied**." Also, all copies of photos and items "shall be filed with the circuit clerk."

Many agencies probably did not routinely copy or photograph seized evidence when executing a search warrant, and the Constitution does not require this. But Senate Bill 1211 changed that when it amended Section 542.276 and mandated that all seized evidence be photographed or copied.

While it is too early to know the consequences of failing to photograph evidence, defendants probably will seek to have the evidence suppressed because officers failed to follow the judge's orders in executing the warrant.

Officers can carry hidden guns throughout U.S.

President Bush signed a bill on July 22 allowing law enforcement officers to carry their hidden guns throughout the United States.

The Law Enforcement Officers Safety Act of 2003 amends the federal criminal code to authorize qualified officers carrying an agency-issued photo ID to carry a concealed firearm, notwithstanding state or local laws. Certain qualified retired officers also may carry a firearm.

The authorization does not supersede state laws that permit private entities to prohibit the possession of concealed firearms on their property, or prohibit the possession of firearms on state or local government property. The bill excludes machine guns, firearm silencers and destructive devices.

U.S. Supreme Court: "Miranda" warnings must be effective

Missouri v. Seibert
No. 02-1371
June 28, 2004

In *Missouri v. Seibert*, the interrogating officer questioned the arrested suspect and intentionally withheld the *Miranda* warnings. After Patrice Seibert had confessed, the officer advised her of the *Miranda* warnings and questioned her again. She again confessed.

At trial, the officer testified he had been trained by a national training organization to conduct this type of questioning. This training was based on an earlier Supreme Court decision. Only the second confession was used at trial.

The Missouri Supreme Court held that the confession was inadmissible and the state appealed the case.

In a plurality opinion, the U.S. Supreme Court held that under the facts

SEE SEIBERT, Page 2

Police can ask for name during stop

Hiibel v. Nevada
No. 03-5554
June 21, 2004

The U.S. Supreme Court has upheld a Nevada law requiring individuals subject to a lawful *Terry* stop to give their names.

In *Hiibel v. Nevada*, the investigating officer asked Dudley Hiibel for his name 11 times. Each time, Hiibel refused and told the officer to either arrest him or leave him alone. Hiibel appealed his conviction, arguing that the Fifth Amendment right against self-incrimination included the right to refuse to identify one's self.

In the June 21 ruling, the majority of the Supreme Court held that "Asking questions is an essential part of police

SEE TRAFFIC STOPS, Page 7

Top court clarifies search incident to arrest

Thornton v. United States
No. 03-5165
May 24, 2004

The U.S. Supreme Court has clarified the scope of a vehicle search during a custodial arrest.

When an officer makes a custodial arrest — when the suspect is taken into custody — the officer is authorized to completely search the suspect. As part of the "search incident to arrest," the officer also may search the entire interior of the vehicle if the individual was in it at the time of seizure.

In *Thornton v. United States*, decided May 24, a Virginia officer followed a suspect to a parking lot but did not make contact until after the suspect had exited his car. The officer obtained probable cause, arrested the suspect, searched the interior of the suspect's car and found a firearm. Possession of the firearm was illegal because the suspect was a convicted felon.

On appeal, the suspect argued police may not search a car incident to arrest unless the individual is in his vehicle at the time of arrest or when contact is made.

The Supreme Court rejected that contention, noting in "all relevant aspects, the arrest of a suspect who is next to a vehicle presents identical concerns regarding officer safety and the destruction of evidence as the arrest of one who is inside the vehicle."

The court announced a clear and practical rule that as long as the suspect is a "recent occupant" of a vehicle, officers may search that vehicle incident to an arrest. This is true if the arrest is lawful, it is a custodial arrest, and the search is limited to the vehicle interior.

Note: The trunk is **not** subject to search as a search incident to arrest.

Top court rules in 2 other Miranda cases

United States v. Patane
No. 02-1183
June 28, 2004

In a *Miranda* case decided contemporaneously with *Seibert*, a plurality of the U.S. Supreme Court upheld the admission of physical evidence obtained after the arrested suspect was questioned without *Miranda* warnings.

In *United States v. Patane*, the officer attempted to give the *Miranda* warnings, but did not complete them because the suspect interrupted him and said he knew his rights. The suspect then made statements that led to the seizure of a weapon. The principal opinion observed that failing to give the *Miranda* warnings was not itself a violation of the suspect's constitutional rights, and it held that the physical "fruits" (the weapon) of voluntary but unwarned confessions were admissible at trial.

Yarborough v. Alvarado
No. 02-1684
June 1, 2004

The U.S. Supreme Court ruled that the test for determining whether a person is "in custody" for purposes of *Miranda* is an objective test that does not turn upon the suspect's youth or lack of experience with law enforcement. In other words, a person is "in custody" for purposes of *Miranda* if the ordinary reasonable person would believe he is in custody.

Note, however, the court also stated in *Yarborough v. Alvarado* that youth and inexperience **were** proper factors to consider in determining whether a statement was voluntary. Also note under Missouri law, children younger than 17 **must** be informed that they have the right to have a parent or guardian present during custodial interrogation. (Section 211.059, RSMo.) The Supreme Court's decision in no way alters that statutory requirement.

SEIBERT:

CONTINUED FROM PAGE 1

of this case, the "question-first" technique rendered the subsequent *Miranda* warnings ineffective to apprise the suspect of her rights. The principal opinion concluded that because this technique "effectively threaten[ed] to thwart *Miranda's* purpose of reducing the risk that a coerced confession would be admitted, and because the facts [of this case] do not reasonably support a conclusion that the warnings given could have served their purpose," the post-warning statements were inadmissible.

In light of this opinion, officers ordinarily should give the *Miranda* warnings to any arrested suspect **prior** to any questioning. A two-stage interrogation technique like the one used in Seibert's case will only produce admissible statements if the *Miranda* warnings preceding the second interrogation are fully "effective."

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Police liable for executing incomplete warrant

Groh v. Ramirez
No. 02-811
Feb. 24, 2004

The U.S. Supreme Court held that police officers could not claim to be acting in good faith in executing a search that failed to indicate or describe the items to be seized in executing the warrant. This is in spite of the fact that the items to be seized were listed on an accompanying affidavit, and the officers were careful to only seize those items.

In *Groh v. Ramirez*, an ATF agent was sued by a disgruntled homeowner after the agent prepared an affidavit and application for a search warrant to look for illegal weapons.

A clerical error was made on the warrant — the house description was erroneously typed where the items to be seized should have been listed. The warrant also did not explicitly incorporate by reference the affidavit of probable cause.

The court ruled on Feb. 24 that technical compliance is required for a warrant to be valid. The court focused on the requirement under the Fourth Amendment that warrants must state with "particularity" the items to be seized.

A majority of the court concluded the officer could not avoid liability from the civil lawsuit by asserting he was acting in "good faith" reliance on the warrant because all officers are expected to know that facially defective warrants are invalid.

This case provides a warning to officers that they must review warrants they execute to make sure they are complete and facially valid. Even officers "assisting" in the execution of a warrant, and who often never see the warrant, will likely be held liable if there is a defect. Assuming that the primary officer made sure the warrant is complete and valid is not a defense.

UPDATE: CASE LAW

Opinions can be found at www.findlaw.com/casecode/index.html

U.S. SUPREME COURT

CRUEL AND UNUSUAL PUNISHMENT

Nelson v. Campbell
No. 03-6821, U.S.S.C., May 24, 2004

Section 1983 is an appropriate vehicle for petitioner's claim that his scheduled execution by lethal injection will constitute cruel and unusual punishment and deliberate indifference to his medical needs in violation of the Eighth Amendment. There was no reason to treat the petitioner's claim of "deliberate indifference" differently solely because he has been condemned to die.

JUDGE SENTENCING, GUIDELINES

Blakely v. Washington
No. 02-1632, U.S.S.C., June 24, 2004

Applying the case of *Apprendi v. New Jersey*, the court found that because the facts supporting the defendant's exceptionally harsh sentence were neither admitted by the defendant nor found by a jury, the sentence violated the defendant's Sixth Amendment right to trial by jury.

MENTAL RETARDATION

Tennard v. Dretke
No. 02-10038, U.S.S.C., June 24, 2004

In a capital murder case involving a defendant with an IQ of 67, a lower court never properly considered continued claims by a Texas death row inmate that he was mentally retarded. A reasonable jurist could have found the district court's assessment of constitutional claims about the defendant's low IQ debatable or wrong.

SENTENCING, RETROACTIVITY

Beard v. Banks
No. 02-1603, U.S.S.C., June 24, 2004

Concerning a capital prisoner's habeas petition, the court found its decision in *Mills v. Maryland*, which held invalid sentencing schemes requiring juries to disregard mitigating factors not found unanimously, announced a new rule of constitutional law that did not fall under the *Teague* exception, and therefore could not be applied retroactively by the habeas petitioner.

Schriro v. Summerlin
No. 03-526, U.S.S.C., June 24, 2004

The rule set out by the court in *Ring v. Arizona* requiring the existence of an aggravating factor to be proved to the jury rather than a judge does not apply retroactively to cases already final on direct review, because it was not a "watershed rule of criminal procedure."

UPDATE: CASE LAW

MISSOURI SUPREME COURT

DEATH PENALTY, RETROACTIVE APPLICATION OF WHITFIELD OPINION

State v. Kenneth H. Thompson
No. 83661, Mo. banc, May 25, 2004

The defendant was convicted of two counts of first-degree murder and sentenced to death. The Supreme Court affirmed the convictions but reversed the death sentences and remanded for a new penalty phase trial.

At trial, the jury first returned sentences of life imprisonment but, after polling the jury, the court determined the jury lacked unanimity and ordered further deliberations. After the jury deadlocked, the court found the existence of aggravating factors and sentenced Thompson to death.

On appeal, the court reversed and remanded for a new sentencing hearing because the judge did not adequately poll the jury and sentenced the defendant to death after the jury deadlocked. The defendant asked the court to recall its mandate and resentence him to life in prison under *State v. Whitfield*.

The court recalled the mandate and sentenced him to life. The court held that under *Whitfield* and *Ring v. Arizona*, a jury must determine the facts supporting a death penalty, and a judge cannot impose the death penalty if the jury did not find the facts necessary for such a sentence.

Under *Whitfield*, the holding in *Ring* applies retroactively to all cases not yet final or were still on direct appeal when *Ring* was decided. The defendant's case was not yet final.

Since he was sentenced to death by a judge in violation of his federal constitutional right to jury fact finding, the only remedy is to sentence him to life without eligibility for probation, parole or release, except by act of the governor.

State ex rel. Barry K. Baker, Relator, v. The Honorable Larry Kendrick, Respondent
No. 85653, Mo. banc, May 25, 2004

In this prohibition action, a jury returned a verdict stating it unanimously had found, beyond a reasonable doubt, the presence of four statutory aggravating factors but it was unable to decide or agree on punishment.

The record does not show whether the jury completed the other steps necessary to impose a death sentence, including whether mitigating circumstances outweighed aggravating circumstances, before becoming deadlocked.

The trial court discharged the jury and ordered a new trial on the penalty phase. The Supreme Court made the writ of prohibition absolute, finding that *Ring* and *State v. Whitfield* applied to the case.

FIRST-DEGREE MURDER, DEATH PENALTY

State v. Travis E. Glass
No. 85128, Mo. banc, June 8, 2004

The court properly admitted two of the defendant's written statements he gave to law enforcement officers. His first statement, given without a *Miranda* warning, was made voluntarily.

The defendant was not in custody or under arrest, was permitted to buy cigarettes unattended on the way to the station, and later was allowed to smoke outside without restraint.

Police did not make a show of authority or engage in improper tactics during his first interview at the station as they mistakenly thought they did not have probable cause to arrest him.

The first statement was admissible because he was not in custody before making it, and the next two statements were admissible because they were made following *Miranda* warnings.

The court properly overruled the defendant's motions to quash the information, to strike the state's aggravating circumstance or to require a bill of particulars. The state is not required to plead statutory aggravating circumstances in the information or indictment, and the failure to do so was not improper.

The Sixth Amendment only requires that the accused be informed of the nature and cause of the accusation. The state gave notice to the defendant of the statutory aggravator in general terms 11 months before trial and, with greater specificity, five months before trial.

The defendant's argument that the state failed to prove he "coolly" reflected on killing the daughter is wholly without merit: evidence to support the jury's finding of deliberation was substantial.

The court did not err in refusing to submit to the jury an instruction on involuntary manslaughter, whether based on death by strangulation or suffocation.

The court did instruct the jury on both first- and second-degree murder, and the jury found the defendant guilty of first-degree murder. There is no error in failing to give a different lesser offense instruction because the jury was given the opportunity to reject the element of deliberation and did not do so.

The court did not plainly err in admitting testimony during the penalty phase trial about the defendant walking, uninvited, into homes occupied by other teenage girls. The defendant's argument that the statutory aggravating factor instruction constituted a "fatal variance" from the charging document is without merit.

The state was not required to plead statutory aggravating factors in the indictment, and it gave the defendant proper notice before trial. The instruction did not vary from what the state notified the defendant it was going to prove.

The defendant's argument that the jury had to make findings in two other instructions, regarding the second two of the four steps for determining whether a defendant is eligible for the death penalty, beyond a reasonable doubt also is without merit. Nothing in *Whitfield* or Section 565.030.4 requires a jury to make these findings beyond a reasonable doubt.

UPDATE: CASE LAW

MISSOURI SUPREME COURT

FIRST-DEGREE MURDER, DEATH PENALTY

State v. Carman Deck
No. 85443, Mo. banc, May 25, 2004

The court did not abuse its discretion in allowing a deputy sheriff to testify about a double-hearsay statement given to her through another person. The statement was not offered for its truth but to explain why the police began a search for the defendant and why a house-to-house search ultimately uncovered the crime scene.

The court did not abuse its discretion in overruling the defendant's motion to appear in court unrestrained. The defendant's attorney made no record of the extent the jury was aware of the restraints, and the evidence showed the defendant was a potential flight risk and had killed his two victims to avoid being returned to prison.

The defendant's bare assertions that certain victim-impact evidence was prejudicial are unsubstantiated, based totally in speculation, do not establish fundamental unfairness and do not show how the outcome of the case was substantively altered. The court did not abuse its discretion in admitting this victim-impact evidence.

DOUBLE JEOPARDY, UNLAWFUL USE OF A WEAPON, FELONY MURDER

State v. John D. Couts
No. 85556, Mo. banc, April 27, 2004

The trial court did not violate defendant's double jeopardy rights when it convicted him of second-degree murder, predicated on the felony of unlawful use of a weapon by shooting into a dwelling, and for ACA, predicated on the murder. Cumulative punishments for second-degree murder and for ACA in this case are not barred by double jeopardy.

State ex rel. Green v. Moore
No. 85234, Mo. banc, April 13, 2004

Here, however, the defendant was convicted of unlawful use of a weapon by shooting into a dwelling under Section 571.030.1(3). This is not a type of unlawful use of a weapon, listed in Section 571.015.4, that cannot be used as an ACA.

To the extent that dicta contained in certain appellate opinions can be read to suggest that all types of unlawful use of a weapon offenses found in Section 571.030 are barred from use as predicates for ACA, such dicta is to be ignored.

The General Assembly specifically provided for contemporary convictions and sentences for ACA and unlawful use of a weapon by shooting into a dwelling.

POSSESSION OF A CONTROLLED SUBSTANCE, PRESCRIPTIONS

State v. Billy Lynn Blocker
No. 85704, Mo. banc, May 11, 2004

The court reversed a conviction of possession of a controlled substance. The defendant possessed diazepam that had been prescribed for his grandmother with whom he lived.

The plain language of Section 195.010(40) defining an "ultimate user" indicates the General Assembly intended to allow a household member to possess or control the prescriptions of another household member.

The scope of the lawful possession is limited by the prescription. Accordingly, possession under Section 195.010(40) remains lawful only if the prescribed substance is for his own use or the use of a member of his household.

UNCONDITIONAL RELEASE, EXAMINATIONS

Lloyd Grass v. State
No. 85517, Mo. banc, May 25, 2004

The appellant was found not guilty by reason of mental disease or defect for the stabbing death of his wife and committed to the Department of Mental Health's custody.

He sought an unconditional release under Section 552.040. Both the appellant and the state sought to have him examined, under Section 552.040.5, by a psychiatrist, psychologist or physician of their own choosing and at their own expense.

The department's director of forensic services examined him and found that the release was not appropriate. The appellant objected to the exam because the department consistently had opposed his release.

The court reversed the case because the lower court made no finding about the examiner's ability to function in an independent capacity.

Under *State ex rel. Hoover v. Bloom*, 461 S.W.2d 841 (Mo. banc 1971), an indigent is not entitled to an exam by a professional of the indigent's own choosing but is entitled to an exam by a professional independent of those having custodial control.

IMPLIED CONSENT, SEARCH WARRANTS

State v. Carol Sue Smith
No. 85595 (order dated May 25, 2004)

The court issued an order retransferring the case to the Missouri Court of Appeals, making the decision in *State v. Smith*, No. 82604 (Mo.App., E.D., July 22, 2003) final.

In that opinion, the court held that the "implied consent law" pertains only to warrantless searches and does not prohibit a judge from issuing a search warrant. Police and prosecutors got a search warrant for the blood of a DWI suspect after she refused to consent to a breath test.

UPDATE: CASE LAW

EASTERN DISTRICT

BATSON VIOLATION

State v. Norman V. Hopkins
No. 82033, Mo.App., E.D., May 25, 2004

The court found a *Batson* violation in the state's use of peremptory strikes to remove African-Americans from the venire panel, as the reasons given by the assistant prosecutor were pretextual.

SELF-DEFENSE

State v. Ronnie D. Gonzales
No. 82455, Mo.App., E.D., May 18, 2004

In a prosecution for second-degree murder and ACA, the trial court's ruling excluding testimony about the victim's general reputation for violence, without allowing the defendant to make an offer of proof as to his knowledge of that reputation, was an abuse of discretion.

The court remanded the case for the limited purpose of allowing the defendant to make such offer of proof. It was not plain error to include the initial aggressor language in the self-defense instruction because there was conflicting evidence as to who initiated the incident.

EVIDENCE OF OTHER CRIMES

State v. Leonard A. Payne
Nos. 62104 and 62231, Mo.App., W.D., April 27, 2004

The court did not abuse its discretion in admitting testimony about an uncharged "snatch and run" because the evidence was admissible to provide the jury with a complete and coherent picture of the events that transpired during the defendant's daylong crime spree involving four robberies. The evidence was logically relevant to whether the defendant was guilty of the three other robberies for which he was charged, and its probative value was not outweighed by its prejudicial effect.

WESTERN DISTRICT

PSYCHOLOGICAL EVIDENCE

State v. James W. Boyd
No. 61692, Mo.App., W.D., June 1, 2004

The court erred in excluding evidence that the defendant suffers from a developmental disorder known as Asperger's syndrome in a first-degree murder prosecution.

The defendant argued that evidence about Asperger's syndrome was relevant to explain why he could not have killed the victim and to explain his interest in unusual subject matter. Chapter 552 did not require the exclusion of the evidence. Chapter 552 concerns those cases in which the defendant claims he lacks responsibility for his act because of a mental disease or defect.

The defendant did not claim he lacked such responsibility; he claimed he did not commit the act and the physical and mental manifestations of Asperger's syndrome explain why he could not have committed it. Chapter 552, therefore, was not implicated.

That chapter 552 is not implicated does not foreclose the state from obtaining a mental exam of Boyd, however, because the rules of criminal procedure generally permit the court to compel such an exam.

REASONABLE SUSPICION

State v. Jonathan B. Abeln
No. 62180, Mo.App., W.D., May 11, 2004

The court upheld the trial court's order sustaining the defendant's motion to suppress. The court's finding that the state failed to prove that the trooper had reasonable suspicion that the defendant was involved in criminal activity to warrant a stop was not erroneous.

SOUTHERN DISTRICT

EVIDENCE OF OTHER CRIMES

State v. Donald R. Phillips
No. 25666, Mo.App., S.D., May 17, 2004

In a prosecution for second-degree murder, ACA and first-degree burglary, evidence that the defendant planned to steal anhydrous ammonia and manufacture meth was admissible. Also, the evidence met the motive exception, in that the need for money obtained from the burglary was necessary for the defendant and two other men to complete their plan of making meth.

State v. Terressa L. Cummings
No. 25624, Mo. App., S.D., May 20, 2004

There was sufficient evidence from which the jury could have found that the defendant deliberately asphyxiated the victim. The defendant's actions proved she knew her actions in returning to regag the victim would asphyxiate the victim.

The trial court did not err in admitting testimony about the defendant's statement, just prior to binding and gagging the victim, that the defendant was not going back to jail.

While this suggested evidence of other crimes, this evidence was admissible to show her motive for wanting the victim dead and to present a complete and coherent picture of events leading to the murder.

SUFFICIENCY OF EVIDENCE, POSSESSION

State v. Mark K. McLane
No. 25677, Mo.App., S.D., June 9, 2004

There was sufficient evidence of possession of meth when the defendant tossed a change purse containing the substance from the vehicle in which he was a passenger after it was stopped by a trooper.

The tossing of the backpack from the pickup was consistent with knowledge that possession of its contents violated the law.

UPDATE: CASE LAW

SOUTHERN DISTRICT

CORPUS DELICTI

State v. Chad D. Madorie
No. 25651, Mo.App., S.D., April 27, 2004

The court reversed a DWI conviction because the defendant's extrajudicial statements made to the officer about operating the vehicle while drunk were inadmissible absent separate, independent proof of the corpus delicti.

Rather than discharging the defendant, the court reversed the trial court's conviction and remanded it for a new trial. Had the trial court properly ruled that the defendant's statements were inadmissible given the lack of independent evidence of the corpus delicti, the state might have elected to present more testimony from the other person or other officer who responded to the scene to provide more evidence of the corpus delicti.

CUSTODIAL INTERROGATIONS, PLAIN VIEW DOCTRINE

State v. Harold Craig Birmingham
No. 25610, Mo.App., S.D., April 30, 2004

The court erred in admitting the defendant's statements to police because the state failed in its burden of proving that the defendant was not in custody when the statements were made without the benefit of *Miranda* warnings.

Once the defendant challenged the admissibility of his statements for lack of *Miranda* warnings, the state had to prove by a preponderance of the evidence that the statements were admissible, either because the full *Miranda* warning was given or because the *Miranda* warnings were not required.

The state adduced no evidence demonstrating the defendant was not "in custody" when he made his statement.

PRIOR INCONSISTENT STATEMENTS, SUBSTANTIVE EVIDENCE

State v. James R. Cravens
No. 25142, Mo.App., S.D., May 6, 2004

The state laid a proper foundation for admission of a witness's prior inconsistent statements to police as substantive evidence under Section 491.074. The court rejected the defendant's argument that the statements were inadmissible under 491.074 because each witness acknowledged in trial testimony that they had made prior statements to police.

PRIOR BAD ACTS, EVIDENCE OF MOTIVE

State v. Steven Morgan
No. 25632, Mo.App., S.D., April 29, 2004

In a prosecution for second-degree assault and first-degree burglary, the court properly admitted evidence of two previous encounters with the victim showing the defendant's animosity toward the victim.

The evidence was relevant to motive because the defendant was obsessed with his soon-to-be ex-wife. Other evidence admitted without objection revealed the defendant was angry with the victim, would do anything to keep custody of his child, and had threatened the victim with violence in the past.

Consequently, the two prior incidents of misconduct further showed the defendant's animosity and willingness to commit violence against the victim.

SEARCH & SEIZURE, TRAFFIC STOPS

State v. Arthur Richmond
No. 25935, Mo.App., S.D., May 17, 2004

The trial court did not err in suppressing contraband when it applied the probable cause standard rather than the reasonable suspicion standard to detain the defendant's vehicle to allow a canine unit time to arrive and investigate the vehicle for contraband materials.

After several attempts by the officer to obtain the defendant's consent to search the car, the officer returned the defendant's documents, issued a warning ticket and told him he was free to go.

Based on the total circumstances, the officer did not have a "particularized and objective basis for suspecting the particular person stopped of criminal activity," sufficient to have continued detaining and then searching the car.

TRAFFIC STOPS: CONTINUED FROM PAGE 1

investigations. In the ordinary course a police officer is free to ask a person for identification without implicating the Fourth Amendment." The court expressly recognized that seeking one's identity is a necessary and reasonable part of an investigatory *Terry* stop.

With regard to the Fifth Amendment claim, the court noted that the "Fifth Amendment prohibits only compelled testimony that is incriminating" and "Answering a request to disclose a name is likely to be so insignificant in the scheme of things as to be incriminating only in unusual circumstances."

Missouri has no law similar to Nevada's. It is important to note that the Nevada statute solely was limited to requiring the individual to provide his name. Previous Supreme Court decisions have struck down statutes requiring individuals to produce "credible and reliable" identification. Such laws are only permissible if they limit the requirement to the suspect giving his name, not requiring a particular form of identification.

Missouri does have a law making it a crime to refuse to identify one's self as a witness to a crime (Section 575.190).

Enforcement of that statute is more likely under this decision, but officers are strongly encouraged to discuss this issue with their local prosecutor before initiating an arrest or prosecution.

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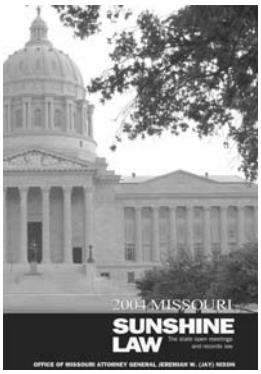
Sunshine Law changes take effect Aug. 28

Several changes to Missouri's Open Meetings and Records Law will take effect Aug. 28. Law enforcement agencies need to be particularly aware of these provisions:

- 610.023 requires records to be provided in the format requested, if available.
- 610.026 clarifies what public bodies can charge for search and copying, and caps fees for standard copies at 10 cents per page.
- 610.027 and 610.100 increase penalties for violations of the Sunshine Law. Courts will be able to impose penalties of up to $1,000 for knowing violations and up to $5,000 for purposeful violations.
- 610.200 removes time limits on the release of incident or accident reports.



The Sunshine Law book is available on the Attorney General's Office Web site at www.ago.mo.gov or in printed format at no cost. For copies, please call 573-751-1800.