

MACDL

ACTION REPORT

Newsletter

MISSOURI ASSOCIATION OF CRIMINAL DEFENSE LAWYERS

NEWSLETTER

APRIL 1987

REPORT FROM THE PRESIDENT

Dear Member:

Arrangements are complete for our Annual Meeting and CLE to be held May 8-9th at the Omni Hotel in St. Louis. Not only do we have interesting speakers and timely topics, it is an opportunity to accumulate credits under the Missouri mandatory CLE rule! Both the luncheon with Gerald H. Goldstein as guest speaker and the awards dinner are included in the registration fee. We look forward to seeing you there.

The nominating committee has prepared a list of officers and directors to be proposed for election at the Annual Meeting on May 9th. If you wish to be added to the slate, please contact J.D. Williamson, chairman of the nominating committee, (816) 836-3900. Otherwise, the list to be submitted is as follows:

President...Thomas Howe
President-Elect...Hugh Kranitz
1st Vice Pres...Robert Trout
2nd Vice Pres...Charles Atwell
Treasurer...Jay D. DeHardt
Director...Bernard Edelman
Director...Murry Marks
Director...James Worthington
Director...Sean O'Brien

Defenders in the State. We look forward to working with you. The Board is working on plans for mini-seminars, to be held at different locations throughout the state, each qualifying for CLE credits. The first will be in St. Joseph, followed by one in Springfield and another at Cape Girardeau. The success of these programs will depend upon their appeal to the criminal defense bar and we would like to have suggestions from our members on topics to be covered.

Once these programs are in place, we believe attendance at the mini-seminars during the year, as well as our annual CLE, will provide sufficient credits to satisfy the annual requirement of the new mandatory CLE rule.

IMPORTANT: Be sure and make a note of our new mailing address.

Sincerely,

DAVID C. GODFREY,
President

MACDL EXECUTIVE SECRETARY

Frances M. Hall
Executive Secretary, MACDL
P. O. Box 15304
Kansas City, Missouri 64106
816/881-3420

WELCOME! to all our new members, which includes all of the Public

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RECENT MISSOURI DECISIONS

EASTERN DISTRICT

IMPROPER EXCLUSION OF STATEMENTS:

State v. Glen Boyland, No. 50853, 3/10/87 (Warren County). Defendant's conviction for 2nd degree murder is REVERSED AND REMANDED. Division One, Kelly, J., holds that the trial court erred in excluding statements made by defendant to a neighbor within minutes of the fatal shooting because the statements satisfied the "excited utterances" exception to the hearsay rule.

DOUBTS OF JUROR'S FAIRNESS:

State v. Horace Coleman, No. 50720, 2/24/87 (City of St. Louis). Defendant was convicted of robbery and armed criminal action. Ruling that the trial court committed reversible error in failing to strike a verirewoman, Division One, Satz, J., REVERSED AND REMANDED. The woman's inconsistent and equivocal answers raised substantial doubts about her ability to be a fair and impartial juror.

COMMENT ON SILENCE OF DEFENDANT:

State v. Raymond Crow, No. 51042, 2/17/87 (Gasconade County). During defendant's trial for 1st degree robbery and armed criminal action, the State commented on his pre- and post-arrest silence. Division One, Crist, J., ordered the convictions REVERSED AND REMANDED, holding that to waive his right not to have the State comment on the exercise of his right to silence, defendant must make a statement obviously related to something; then the waiver is only as to the subject matter of that statement.

NO ARREST FOR "STAYED" LICENSE REVOCATION:

State v. Charles Horst, No. 50801, 2/17/87 (Lincoln County). Since a minute entry in official court records showed that defendant had been granted a stay of the revocation of his license, his conviction of driving while license revoked is REVERSED. Division Five, Simeon, J.

FATAL OMISSION FROM SELF-DEFENSE INSTRUCTION:

State v. Julius Simmons, No. 51582, 3/3/87 (City of St. Louis). Defendant's convictions of 2nd degree murder, 1st degree assault,

Recent Missouri Decisions - 2

and armed criminal action are REVERSED AND REMANDED. Division Two, Dowd, J., holds the failure to include in the self-defense instruction the paragraph instructing on defendant's right to act on reasonable appearances that later prove to be false was reversible error because the evidence entitled him to that instruction.

PEREMPTORY STRIKING OF BLACKS FROM JURY:

State v. Dwayne Sproling, No. 51035, 3/3/87 (City of St. Louis). State v. Jerry Taylor, No. 51235, 3/10/87 (City of St. Louis). In separate opinions the court has REMANDED these cases for evidentiary hearings to determine the validity of defendants' claims that the State used its peremptory challenges to strike all the blacks from the jury, without a neutral explanation.

COMMENT ON FAILURE TO TESTIFY:

City of Cape Girardeau v. Helen Jones et al, No. 51486, 3/10/87 (Cape Girardeau County). The convictions of 2 of the 7 defendants for 1st-degree trespass are REVERSED AND REMANDED because of the prosecutor's direct reference to their failure to testify at trial. Division Four, Gaertner, J.

ATTORNEY REQUIRED TO PRODUCE INVESTIGATIVE NOTES:

Michael Foote v. Hart, Judge, No. 52466, 3/3/87. Petitioner sought a writ prohibiting the judge from ordering production of notes recorded by his attorney and investigator about their interview of an endorsed state's witness. Division Three, Gaertner, J., QUASHED the preliminary writ, holding that disclosure was proper under Rule 25.06(a) inasmuch as the information therein was relevant and material and all portions found to be work product were excised before disclosure.

SOUTHERN DISTRICT

MIRANDA VIOLATION:

State v. Darrell Chapman, No. 14777, 2/13/87 (Greene County). Defendant's conviction for DWI is REVERSED AND REMANDED, because of the admission of defendant's incriminating statements which were made after he was arrested and without Miranda warnings. Division Two, Maus, J.

WESTERN DISTRICT

LAW FOR COMPENSATION OF VICTIMS IS NOT RETROSPECTIVE:

William Herron v. State, No. 38250, 3/3/87 (Cole County). The denial of Herron's 27.26 motion was not error, but the order taxing him \$26 for the Crime Victims' Compensation fund is REVERSED. Division Three, Gaitan, J., holds that the crime to which Herron pled guilty was committed prior to the effective date of Section 595.045, and the sentence imposed was, therefore, in excess of the maximum authorized by law.

ERROR IN SUBMITTING FAULTY VERDICT-DIRECTOR:

State v. Charles Cook, No. 38354, 3/10/87 (Clay County). Defendant's conviction for 3rd degree assault is REVERSED AND REMANDED, for failure to submit a verdict-director which included a cross-reference to the separate instructions on accident and self-defense, as required by MAI-CR 2d 2.04. Lowenstein, J.

IMPROPER ADMISSION OF EXTRAJUDICIAL STATEMENT:

State v. Gary Friesen, No. 37876, 3/3/87 (Pettis County). Defendant was convicted of DWI. He allegedly made an extrajudicial statement to the arresting officer implying he was the driver of the truck. Holding that the court erred in admitting the statement absent separate, independent proof of the corpus delicti, the appellate division, Nugent, J., REVERSED the conviction.

NO FINDINGS SUBSTANTIATING PRIOR OFFENDER STATUS:

State v. Jeffrey Galvan, No. 38304, 2/24/87 (Cole County). The extended sentence of defendant as a prior offender is vacated and the case is REMANDED FOR RESENTENCING. In a per curiam opinion, Division Two holds that the trial court failed to make the findings of fact required by 558.021 warranting a finding beyond a reasonable doubt that defendant is a prior offender.

REMOVAL OF BLACK JURORS:

State v. Jack Hamilton, No. 37787, 3/10/87 (Jackson County). The trial court flatly rejected defendant's timely objection that the prosecutor violated Batson v. Kentucky, by using his peremptory challenges to strike all the blacks from the jury. Since the court did not require the prosecutor to explain his action, Division Two, Dixon, J., has REMANDED the case for the trial court's determination whether the facts establish prima facie purposeful discrimination and, if they do, to determine if the prosecutor can

provide a neutral explanation for his action. If the prosecutor cannot, then the conviction must be reversed.

NO GOOD CAUSE FOR EXCESSIVE DELAY OF TRIAL:

State v. Jay Taylor, No. 37522, 3/10/87 (Clay County). Defendant's conviction of rape, first degree robbery and sodomy is REVERSED AND REMANDED WITH DIRECTIONS. Division Two, Pritchard J., holds it was error to overrule defendant's motion to dismiss pursuant to the Interstate Agreement on Detainers, 217.490, RSMo, as he was not brought to trial within the 180 days specified in the Agreement and the State failed to show good cause for the delay.

BASIS FOR INTRODUCING TEST RESULTS IN LICENSE REVOCATION ACTIONS:

Richard Elkins v. Director of Revenue, No. 38664, 3/3/87 (Johnson County). The Director has prevailed in his appeal of the reinstatement of petitioner's driver's license. Division Three, Gaitan, J., holds that issuance of a type III permit is relevant to show a person's qualifications to administer a breathalyzer test and establish a prima facie case for introduction of the test results. Production of the permit itself is not necessary; testimony regarding possession of the permit is adequate.

ATTORNEY GENERAL OPINIONS

SIS DOES NOT REQUIRE FORFEITURE OF ELECTED OFFICE:

Opinion Letter No. 11-87, 2/13/87 (Requested by W. James Icenogle). Since an S.I.S by a Missouri court is not considered a conviction under 561.021.1, RSMo, neither should an S.I.S by a federal court require forfeiture of an elected office.

Missouri Association of
Criminal Defense Lawyers
P. O. Box 15304
Kansas City, MO 64106

BULK RATE
U.S. POSTAGE
PAID
PERMIT NO. 1917
K.C., MO

Special Public Defender
505 East 13th Street
Fourth Floor
Kansas City, MO 64106