

THE PROSECUTOR'S PERSPECTIVE

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JURY INSTRUCTIONS FOR OFFICERS' USE

By: Deputy District Attorney, Eamon Fitzgerald

In more than twenty years of prosecuting crimes I have learned that no matter how much prosecutors and law enforcement officers care about their work and want to enforce the law and make our community safe, misunderstandings arise between them that lead to frustration and even anger. One common cause of that frustration is confusion and lack of understanding of what the other half of the team needs to do its job successfully.

People in and out of law enforcement often have misconceptions about what behavior constitutes what crime. For example, we, as prosecutors, will hear law enforcement officers and sometimes fellow prosecutors and victims talking about a house being "robbed" when a single criminal broken into a house and stole property. Upon reflection, we all know that we mean the house was burglarized not robbed. "Robbed" is just imprecise short hand for what we really mean.

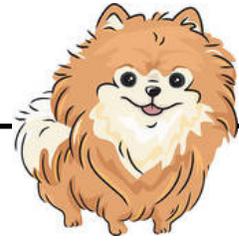
When I was a brand new prosecutor I was handed a stack of files for cases set for jury trial. I was told "Here, go try these cases." They were misdemeanors, mostly DUIs, but what follows in this article applies to all crimes. I thought I knew what I had to prove to a jury in those cases, then an old-timer, my mentor, told me to go to the office law library and pull out two paperback books of jury instructions called CALJICS (now we use CALCRIMS). That is how I began my twenty year relationship with criminal jury instructions. CALCRIMS jury instructions are contained in two paperback books that contain the numbered and listed *elements* that a prosecutor must prove for each case he or she is assigned to try.

The CALCRIM books are used as follows: Go to the index in the back of the book and look up your crime by name, for instance rape, murder, theft assault with a deadly weapon, whatever your case might be about, or you look it up by Code section and number, for instance Vehicle Code section 23152(a) for DUI. When you find the crime you are looking for in the index, the index directs you to an "instruction number" which is located numerically in one of the two volumes.

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THE PEOPLE V. RYAN EDDY WATENPAUGH (AKA "THE DOG PAW CASE")

By: Deputy District attorney, Brandon Storment



This case went to trial this past summer – and lasted a good portion of it. For background, the Defendant was charged with – and ultimately convicted of – abusing his girlfriend at their shared home in Palo Cedro. After she moved out, he stalked her. His behavior included, but was not limited to: stealing her dog, killing it, taunting her that he had fed it to her (disguised in a pulled-pork sandwich – which, importantly, she had saved) and, ultimately, leaving its paws on her front porch late one night with a note directing her to “burn in hell, whore.”

Despite the heinous abuse to the victim, this case obtained international media attention due to the dog. And, the dog presented some unusual investigative problems. For one, it had to be established that the paws were real and belonged to the victim's missing dog. The DOJ, which normally handles DNA work, does not do so for cases involving animals. But, personnel at the local DOJ provided a reference – the Veterinary Forensic Laboratory at UC Davis (for future investigative needs, you can ask for lab director Christina Lindquist). As it turns out, this lab, which is basically in our backyard, investigates cases from all over the world involving animals. They were able to conduct a nuclear DNA comparison, comparing DNA extracted from the paws to a reference sample taken from a chew toy. And, they found a match. The paws belonged to the victim's missing dog.

The lab at UC Davis was also able to test the cooked meat saved by the victim to determine its species. In doing so, they determined the meat was pork, not Pomeranian (hat-tip to Jim Schultz at the *Record Searchlight* for that line.) This finding was consistent with the Defendant's post-arrest statement to the lead investigator, RPD Inv. Levi Solada.

Next it needed to be determined how the dog died. The Defendant claimed he found the dog dead on the side of the road after it was hit by a car. He was adamant he did not kill the dog. He merely removed its paws in order to give them to the victim and bring her closure. Unfortunately a necropsy (animal autopsy) could not be performed because we

did not have the dog's body (although the defense attorney claimed to have it in a freezer when he spoke to the media following the preliminary hearing. He claimed they were saving it for trial to establish that the Defendant was telling the truth. Needless to say, that did not happen.) But, we did find a forensic veterinarian, Dr. Edward Fritz, who examined the paws. He was able to determine that the cause of death offered by the defense – that it was hit by a car – was not true based on the evidence. In his training and experience (and, in his 30-plus years of practice he had encountered hundreds of dogs hit by cars) dogs hit by cars share certain shared characteristics: (1) shredded toenails from gripping the asphalt; (2) abraded pads from the impact; and (3) soiling (from dirt and/or blood). Here, the paws were in pristine condition, which was not consistent with the Defendant's version of what happened. So, even though we could not prove affirmatively how the dog died, we could argue the Defendant was lying about the cause of death and his lies were circumstantial evidence of consciousness of guilt.

And the jury did find the Defendant guilty. Despite the twists, turns and quirks associated with a Berg trial, the jury returned all guilty verdicts after approximately three hours of deliberations.



JURY INSTRUCTIONS

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After finding the instruction number that covers your crime, you locate that instruction, photocopy it and have it with you when you are investigating a crime, or for prosecutors, we use that instruction when “working up” or preparing our case for trial. Read that numbered instruction and you will learn the “*elements*” that we, as a law enforcement team, must prove beyond a reasonable doubt to convince a jury to convict a defendant of whatever bad thing he or she got caught doing.

For prosecutors CALCRIM is a starting point. (It should be for officers as well.) It is where prosecutors, having read the law enforcement reports in the file assigned to him or her, and having analyzed the case, determine that more or better evidence is required before he or she can prove the case.

An example, of a common misunderstanding that can be avoided by knowing the jury instructions, involves the crime of Receiving Stolen Property in violation of Penal Code section 496 (a). Prosecutors often receive police reports for filing that show the suspect “reasonably should have known” that the stolen property they possessed was stolen. Unfortunately, “reasonably should have known” is not an element of that crime. Instead, CALCRIM 1750 states the three elements of that crime, which we must prove beyond a reasonable doubt to convict the criminal: **1. The defendant received property that had been stolen; 2. When the defendant received the property he knew that the property had been stolen; and 3. The defendant actually knew of the presence of the property.** Therefore, officers need to obtain clear evidence to prove that the defendant actually knew that the property was stolen in order to prove the defendant's guilt.

Often in the best of all possible worlds, the prosecutor drafts a “Follow Up” Investigative Request (*FI*) and sends it back to the originating agency asking for additional information to help prove the elements. Sometimes, after the “*FI*” is sent and the follow-up is completed by the agency, the prosecutor determines that the case cannot be proven and must be dismissed or the case is too difficult to prove beyond a reasonable doubt to twelve strangers, our eventual jury, and the case is resolved for less than the original charges.

Here is where misunderstandings and bad feelings may arise between members of the law enforcement team. Officers work hard to investigate cases and protect the community. Sometimes, as we all know, the best case scenario, summarized in police reports, is better than what we get at trial when witnesses avoid service and refuse to testify or lie on the stand to protect the defendant or evidence is excluded by the court. Sometimes the facts are not there or the report needs more work. Prosecutors make decisions applying the facts in police reports to the law set out in the jury instruction elements and make decisions about his or her ability to prove the case.

We can eliminate much of the misunderstanding between prosecutors and law enforcement officers if law enforcement departments had their own copies of those two paperback jury instruction books, that the District Attorney's Office has and its prosecutors use every day. Officers will help the team when they learn the elements of the crimes they are investigating, at the level they need to be proven to a jury, set out in the CALCRIM books. With a working knowledge of the elements of crimes, particularly the ones that they investigate most often, officers will more clearly understand what prosecutors require to prove our cases. When each player on the team knows what the other players need to successfully do their jobs, the team and its players will be happier and more successful.



HOLDING DUI DRIVERS ACCOUNTABLE

By: Deputy District Attorney, Laura Smith

When people think of Driving Under the Influence arrests, generally their first questions are what was the defendant's blood alcohol level? What drugs were in the defendant's system? How did the defendant do on the Standardized Field Sobriety Tests? Does the defendant have any priors?

But another very important, but sometimes forgotten or under-investigated, aspect of Driving Under the Influence investigations is the thorough documentation of victim's injuries, including those of the defendant's passengers.

Whenever you respond to a Driving Under the Influence collision, whether it is a solo vehicle collision or multiple vehicle collision, don't forget to talk to each person involved and document any injuries or complaints of pain. Be sure to get a thorough description of the location of the injury, what it looks like if it is visible, and how the person feels due to the injury. If you have a camera available, try to document any physical injuries. If people indicate they are hurt, but they don't believe the injuries are life threatening and they plan to "just go to the doctor later," try to find out where they plan to go for treatment, and request a signed medical release.

If the victims are being treated by medical personnel at the scene, document who you speak to and who witnessed the injuries. If they are transported to the hospital, and you are able to speak to medical staff regarding the injuries sustained, be sure to document who you are speaking with, how they are employed, and how long they have been in their career field. If the injury is one that is not visible, such as a broken bone, a back or neck injury, internal organ damage, or a concussion, be sure to document how the medical professional was able to diagnose the injury, for the purpose of preliminary hearing. Did the Doctor look at X-rays, was there an MRI completed, did the Doctor diagnose the injury based on the resultant symptoms? Also, if the victim received sutures, stitches, or staples, be sure to document those with photographs, if possible, as well as a description of their number and location. Again, if you haven't done so already, please request a signed medical release.

If the report isn't due immediately, when you are writing your report, please take time to re-contact the victims. If they indicated they suffered pain, and planned to see their doctor, inquire into whether they have sought medical care, and whether they have any continued pain or diagnosed injuries. If bruising has developed, attempt to either have them submit photos, or go take additional photos, if time permits. Ask for the names of their doctors or where they received treatment. Inquire into what dates they were treated. And again, if not already done, seek a signed medical release.

Although proving the elements of Driving Under the Influence is one of the most important aspects of prosecution, clear documentation of injuries sustained by victims often makes the difference in determining whether a DUI is filed as a misdemeanor or a felony, and if so, whether the Great Bodily Injury enhancement applies. If the crime is determined to be a felony, anticipate a preliminary hearing within approximately 10 days, where we will need to prove those injuries in order to hold the defendant to answer for the charged crime.



TRAFFIC INFRACTIONS: PROVIDING NOTICE TO DEFENDANTS

By: Senior Deputy District Attorney Ben Hanna

The Shasta County District Attorney's Office has recently begun a program where certain traffic offenses are reduced from misdemeanors to infractions at the filing stage. In order to effect this process, the defendants are notified by mail that the case has been reduced to an infraction. They then appear in traffic court and deal with the case there.

Often, persons cited have no permanent address, but we still need to be able to attempt to validly serve them by mail. To that end, our office is requesting that law enforcement list an address of "general delivery" so that the appropriate steps can be taken to notify the person cited of the reduction to an infraction and notify the defendant that all mail related to the case will be mailed to him/her "general delivery."



REASON TO APPROACH ADULT DRUG OFFENDERS DIFFERENTLY THAN JUVENILES UNDER PROP 47 SCHEME?

By: Deputy District Attorney, Eric Duesdieker

Following the recent passing of voter proposition 47 simple drug possession charges, absent certain conditions, uniformly became misdemeanors under California law. Law enforcement is posed with a serious issue in our county as a result.

Because jail space is at such a premium in our county, it is much harder to house the relatively large number of adult individuals in our county who are facing drug possession charges (as well as concomitant misdemeanor conduct like theft and illegal camping). There is now a revolving door situation for adult drug users who are likely to continue to rack up drug possession charges while at large -- as it is the natural inclination of an addict to seek out and possess their drugs of choice when left to their own devices.

Law enforcement is thereby tasked with continuing to police chronic adult drug abusers in our community and until those offenders commit a felony offense, those individuals are likely to remain at large -- and to continue purchasing, possessing, and using illicit drugs.

For two reasons -- space in the juvenile rehabilitation facility or JRF (commonly referred to as juvenile hall) coupled with probation involvement and the importance of early intervention -- it may make sense for law enforcement to pursue juvenile drug offenders more aggressively than their adult counterparts.

The first significant difference is that, unlike for adult misdemeanors generally, for juveniles there is space to keep offenders in custody when appropriate. If a minor becomes a ward, probation prepares a plan for dealing with the minor. The involvement of probation allows greater supervision and control over juvenile offenders for misdemeanor crimes. A juvenile drug offender will most often remain in custody for their own safety pending probation looking into appropriate housing options for the minor. Whereas an adult misdemeanant may pick up a myriad of cases that go to warrant before he or she is actually taken into custody pending disposition (the tendency is for law enforcement to cite and release), a juvenile offender is much more likely to be taken into custody, and to remain there pending resolution of their case(s).

The second significant difference suggesting a differential approach to law enforcement's approach to dealing with juvenile drug offenders is that juvenile offenders are, by definition, younger than their adult counterparts. Teens are naturally in a transitional state as they develop from children into adults. Because they are still in this transitional state they are naturally more adaptable. There is more time to reach these individuals and a better chance they are receptive to the help that they do receive.

Many juvenile offenders come from difficult and often tragic beginnings, many who choose homelessness over returning to their "homes." However, with early intervention and the resilience of youth it is not a situation without any hope. Though many juvenile offenders will no doubt continue down a road of self-destruction, there is a real possibility that some may correct the trajectory of their lives up to the point where law enforcement becomes involved.

Whereas, adult misdemeanor drug offenders continue to skate as a result of an inability to effectively deal with them in their current numbers, law enforcement has a very real opportunity to interrupt the criminality of juvenile offenders. It is for that reason that law enforcement should actively seek out juvenile drug offenders because it is less likely to be just another report on a repeat customer, and may save the community another chronic problem down the road.



December is DUI Community Awareness
Be on the lookout for our next community event
Presented by the
Crime Victims Assistance Center



RETHINK YOUR NEXT DRINK

December 8, 2015

11 am - 6 pm

Location TBD

PROVIDING FALSE INFORMATION OF IDENTITY: WHAT IS THE CRIME?

By Senior Deputy District Attorney Ben Hanna

Every officer has had the experience. You contact an individual and ask his or her name and he gives you a false name. Sometimes he makes up a name on the spot, and sometimes the lie is more complex, with the suspect giving the real name, date of birth, etc. of a real person. Depending on the situation, the lie about the name may be a crime, and it may even be a felony.

Usually, the lie isn't very good, and the officer is able to determine the person is lying relatively quickly. Maybe he doesn't know how to spell his supposed name, or maybe the "name" changes several times during the contact. Whatever the reason, the officer figures out that the name provided does not belong to the person they are contacting. Most of the time, the suspect realizes he is caught and admits his true name, either in the field or at the jail. In those situations, an appropriate charge is Penal Code section 148.9. Section 148.9 makes it a misdemeanor to falsely identify oneself as another person or as a fictitious person in order to evade the process of the court or to evade proper identification.

Other times, the suspect providing the false name is more sophisticated. He provides the name of a real person such as a relative or acquaintance, and he may even provide the correct date of birth, driver's license number, or social security number for that person. If the lie is not caught, there could be serious problems for the innocent person impersonated, including fines, arrest, and outstanding warrants. When this occurs, a defendant

has committed a violation of Penal Code section 529. Section 529 makes it a felony to "falsely personate" another person, and, in doing so, subject that person to criminal prosecution. So, for example, if a person is pulled over for speeding, and provides someone else's information and signs the citation as another person, he has committed a violation of section 529, since the person he is impersonating is running the risk of a warrant or license suspension for a ticket he did not receive.

Knowing the difference between these crimes and carefully documenting the information provided will help contribute to a successful prosecution, and may even result in a felony conviction.



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A NOTE FROM THE EDITOR

In this edition you were provided with some information regarding holding people accountable for their actions and/or with some suggestions on how that can be done with more clarity. Also, you heard about a sensational case that went to trial this summer and the hurdles the prosecutor and investigator went through in order to hood the defendant. On October 16, 2015 that defendant was sentenced to 7 years state prison, the maximum state prison sentence he could receive.

Curtis Woods
Senior Deputy District Attorney
Shasta County