



The Forensic Artist and the Statute of Limitations

By Detective Charles E. Holt, Jr.
Miami-Dade Police Department
Forensic Artist Unit

After completing a drawing of a sexual battery subject, I told the lead detective that I enjoyed aging wanted subjects. I told her that I liked to find subjects that have been wanted for more than ten years. Although I'm a forensic artist, I'm still a detective and I sometimes locate wanted subjects using the department's many computer data bases. After arresting these fugitives, I compare my drawings to their actual appearance to test my aging accuracy.

During our conversation, she relayed an incident that occurred to her. Seven years ago, she had an arrest warrant issued for a subject that was wanted for rape. Once the warrant was issued, she turned her attention to her many other cases. Just recently, the subject was arrested on her warrant.

The defendant's attorney filed a motion to dismiss the charges. At a hearing, the defense attorney asked the detective what she had done during the last seven years to find and locate his client. She explained that she had routinely checked to see if the subject had been arrested. She spent most of her time investigating other cases constantly being assigned to her. The answer didn't satisfy the lawyer. He pressed her. What active steps did she take to locate his client? The judge ruled against the defendant, only because he had fled to another state, hiding behind a different name and date-of-birth. The judge indicated that if the defendant had not done that, he would have dismissed the charges because the detective did not actively seek the subject, allowing the statute of limitations to run and expire.

I found that the sexual battery detective's experience was not unique. A robbery detective told me that charges against a robber were almost dropped because the subjects eluded police for almost two years. Three sub-

jects robbed and shot two victims inside a convenience store. Two of the three subjects were quickly apprehended. One and a half years later, one of the victims died from the gunshot wound. A short time later, detectives located the third subject. He confessed to the robbery. His defense attorney argued that charges should be dismissed because the lead detective did not attempt to trace the subject through telephone and credit card records, surveillance and continuous contacts with family members. Although the statute of limitations had not expired, the lawyer argued that the case should be dismissed anyway. The key defense witnesses unknown to the detectives could not be located and the defense could not mount a proper defense, the attorney argued. The judge refused to dismiss the charges, but he took two months to ponder whether the defendant's constitutional rights were violated.

These conversations led me to Joe Robinson of the Felony Screening Unit of the Miami-Dade County State Attorney's Office. Joe provided me with twelve cases where defendants who had been arrested for outstanding warrants had their charges dismissed because the defense attorney convinced judges that the statute of limitations had expired prior to the arrests or that constitutional rights were violated because the police did not diligently search for the subjects. I'm not a lawyer, but I believe we police officers have a problem.

Here is an example. On the 8th of May, 1996, Florida's 3rd District Court of Appeals issued a ruling on Bradley M. McNeil v. the State of Florida. The ruling stemmed from a state attorney's decision on November 30, 1982, to charge McNeil with grand theft after he failed to pay for the use of a rental car. A *capias* warrant was then issued for McNeil's arrest. A detective verified that McNeil did not live at the

address he had given to the rental car agency. No other efforts were made to locate McNeil. Twelve years later, on the 15th of March, 1995, McNeil was arrested on an unrelated charge and on the outstanding grand theft warrant.

McNeil asked the courts to dismiss the grand theft charge, claiming that the 3 year statute of limitations had expired. Florida law states that the prosecution of a non-capital, non-life felony, such as grand theft, must be commenced within three years after the alleged offense. Prosecution can occur after 3 years if an indictment, information, *capias*, summons, warrant or other process is issued within the 3 years and the delay in arrest after three years is reasonable. Whether or not the delay in arrest is deemed reasonable may be determined in light of a defendant's efforts to elude prosecution. The appeals court determined that in the McNeil case, however, the delay in prosecution was unreasonable. The state offered no evidence that police made any effort to locate McNeil, such as checking obvious sources like telephone directories. The police did not do a "diligent search" of McNeil "in a timely manner."

The words "diligent search" and "in a timely manner" occurs in every case history. The courts consider a diligent search as follows:

In conducting a diligent search for a defendant, in order to avoid unreasonable delay in executing process after charge, for purposes of statute of limitations, state must follow up leads and check obvious sources of information, which include telephone book, city directory, driver's license records, vehicle license records, property tax records, voter's registration records, probation office, local utility companies, law enforcement agencies, state attorney's office, schools, armed forces, prison system, marriage records, name



change records, relatives of defendant, and witnesses in case; such sources are not all-inclusive, and failure to consult all of them will not result in failure to conduct a diligent search. (State v. Mack, App. 4 Dist. 637 So 2d 18, 1994.)

As a police officer, I can tell you I didn't do all of that the last time I obtained an arrest warrant. I did the same thing my friend did. I went to my next assigned case and hoped that the subject got picked up on my warrant. If I was a defense attorney, I would drive the State Attorney's Office crazy with these diligent search questions every time the opportunity presented itself. I understand the legal importance of the statute of limitations but I thought the issuance of an arrest warrant stopped the statute-of-limitations clock but apparently this is not the case. The clock only stops if we turn over every rock looking for the subject, even if an arrest warrant has been signed.

We forensic artists are an overlooked resource to prove that rocks are being overturned. Working closely with Miami-Dade County's Crime Stopper's Unit, I have aged about thirty wanted subjects in the last several months. Most of the cases have run past their statute of limitations. When I aged a subject and Crime Stoppers releases the drawing to television stations and newspapers, the defendant might get caught due to the publicity generated.

Then again, maybe not. Either way, the drawing and its release contributes to our "diligent search." The "show and tell" argument a prosecutor can make in introducing a forensic drawing to a judge could be a powerful argument.



The forensic artist can age the subjects for Crime Stoppers, who then release the drawing to T.V. stations and to newspapers, thereby contributing to a diligent search.

A forensic drawing in and of itself will have little impact if investigators do not use them. The sketches have to be handed out to patrol officers, distributed to neighboring law enforcement agencies and given to the news media. If a drawing is lost among the piles of papers on a detective's desk, the detective renders our efforts ineffective. As forensic artists we also have a responsibility to understand the total investigative process. We should know how the county warrants bureau and the local crime stoppers unit operate as well as know what criminal investigative clearing houses exist on the local, state and national levels and how forensic drawings can be channeled to them.

Understand the unique problems that confront your detectives, whether they be administrative, criminal or political. In other words, think like a cop but perform as an artist.

I have yet to experience or hear of the impact a forensic drawing has had in a statute of limitations hearing. Let's change that and let the impact be positive.



The forensic artist can work from old photographs of the subjects (above) to give police a more likely image of the subjects' current appearance (below), as was done with this husband and wife who are still being sought by police.



The Palm Print Symposium was held at the FOP hall in West Palm Beach on November 16th –18th. It was organized to provide training for FDIAI members as well as identification people from other state divisions. Thirty eight students attended.