

Use of an Expert Witness in Prosecuting Methamphetamine Lab Cases

Methamphetamine use, production and distribution are quickly becoming the number one drug problem around the country. In a survey of over 500 county sheriffs, 58% rated methamphetamine as their number one drug problem. Methamphetamine laboratories ("meth labs") create several problems for law enforcement. One of the most significant problems is the specialized knowledge and skill required for the prosecution of charges related to a meth lab.

A meth lab investigation is a different type of narcotics investigation and requires specially trained police officers. These officers must then turn the investigation over to their local prosecutor to try the case in court. Just as the investigation of a meth lab requires specially trained police officers, the prosecution of the case requires specially trained prosecutors. Since many jurisdictions do not have the resources to specially train their prosecutors, many of these cases are not prosecuted.

A prosecutor does not need to be a certified clandestine laboratory investigator or a chemist to prosecute a meth lab. However, the prosecutor does need to have a basic knowledge of meth labs. The prosecutor can obtain the knowledge to prosecute a meth lab by attending a Methamphetamine Lab Awareness training class. A short eight hour class will give the prosecutor a basic knowledge about how methamphetamine is manufactured, the investigation of meth labs and an explanation of why the collection of evidence in a meth lab is different from other narcotics investigations. Several different organizations offer this type of training around the country.

The prosecution of a meth lab case begins like any other narcotics case. The prosecutor will address legalities of the case such as search and seizure, decide which witnesses to use and review the strengths and weaknesses of the case. Once this process is completed, the prosecutor must decide how to present the case to a jury. The use of witnesses becomes crucial because of the lack of physical evidence. Due to contamination the evidence is destroyed.

When presenting a meth lab case to a jury the prosecutor needs to teach the jury about the manufacturing of methamphetamine and what constitutes a meth lab. The prosecutor needs to have a witness who can explain or teach the jury about the processes used to make meth. Educating the jury can be done by an expert witness or chemist.

There are advantages to having an expert witness who is not a chemist to teach the jury about meth labs. One advantage is the jury will see that a non-chemist can understand the process. This leads to the question of who should the prosecutor use as an expert witness? An easy answer is someone who will be qualified as an expert witness. The prosecutor needs to use someone who can explain or teach the jury about meth labs in simple language, so the jury can understand the process of making meth. It will be similar to teaching a meth lab class so many expert witnesses are also instructors.

If the prosecutor uses a non chemist as an expert witness will not eliminate using a chemist in the case. The chemist will still need to testify about the testing of the chemical samples. This is unless the defense attorney stipulates to the test results.

The prosecutor may use an experienced narcotics detective as the expert witness. There are several reasons to use a narcotics detective. First, a narcotics detective will be experienced in testifying in court. Second, a specially trained narcotics detective will have an understanding of meth labs. If the narcotics detective is involved in talking to citizen groups or teaching he/she will have better sense in how to present the information in a clear manner so the jury will have a better understanding about meth labs.

The prosecutor has to decide what order he/she will present the evidence and witnesses. The prosecutor must decide to present all the evidence to the jury and then bring in the expert witness to tie everything together or explain about meth labs and then introduce the evidence? There are pros and cons to whichever order is used by the prosecutor.

If the evidence is introduced first, the jury may not understand how it

relates to manufacturing meth. This may result in the jury not noting the importance of the evidence. If the expert testifies first and then the evidence is introduced it might be necessary to bring the expert witness back and explain how the evidence relates to the meth lab. It would be best to have the expert witness be the person who introduces the evidence. Unfortunately due to the rules of evidence this usually is not possible unless the expert witness was the person finding the evidence.

When the expert witness does testify, he/she needs to explain or teach the jury how to manufacture methamphetamine. The expert witness should make the courtroom their classroom. It is not necessary to teach all the different manufacturing processes, just the process used by the defendant. After the explanation is completed, the expert witness can explain how each piece of evidence ties into making methamphetamine. If the evidence is red phosphorous, cold tablets, sulfuric acid, salt, a mason jar, a one liter bottle and tubing the expert witness then explains how each item is used in the manufacture of meth.

The expert witness would explain how the evidence is use and at which stage of manufacture it would be used by the person making meth or "cook". The red phosphorous is used in the second stage or the "cooking" stage. The cold tablets are the source for the precursor, pseudoephedrine, which is the first stage. When the sulfuric acid and salt are mixed together it makes hydrogen chloride gas which is bubbled into the meth oil to force the meth to crystallize, which is the final stage of manufacturing. The mason jar can be used as the reaction vessel in each stage. Since the jury has been taught the process to make meth they now know how to the evidence was used by the defendant to manufacture meth.

The prosecutor should use aides to assist the expert witness present the information to the jury. Some of the aides to use are pictures or diagrams explaining the process to make methamphetamine. The prosecutors might have the pictures developed and enlarged a little bit and will hand the pictures to the jury. Instead the prosecutor can use a PowerPoint presentation to show the

photos to the jury. The advantage of a PowerPoint presentation is the entire jury sees the photo as the prosecutor or expert witness is talking about it and not later after the other jury members have looked at the pictures. The larger the picture is the easier it will be for the jury to see. This will allow the jury to get a visual picture of the scene. The prosecutor and expert witness want to paint the picture of the crime scene and now the PowerPoint presentation with the photos do the job. The prosecutor should have photos of the entire lab and close up photos any item the expert witness talks about.

In the closing arguments the prosecutor can again use the PowerPoint presentation. The PowerPoint presentation of photos will let the prosecutor again show the jury the meth lab as he/she explains the case again. A picture is worth a thousand words and in this case the picture might add up to a conviction.

Authors Bios

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Brian Sallee is a detective with the Albuquerque Police Department. Brian has been a police officer for over 26 years and has spent over 17 of those years working narcotics. Brian testifies as an Expert Witness on a range of areas including meth labs. Brian is also co-author of two books; "Narcotics Investigations; Working and Surviving" and "The Methamphetamine Handbook; What You Need to Know"

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Mark Drebing is a Deputy District Attorney with the Second Judicial District in Albuquerque, NM. Mark is the supervisor of felony narcotics prosecution. Mark has over ten years as a prosecutor and spent four years as in house counsel for the Albuquerque Police Department. Mark was selected as prosecutor of the year for New Mexico, in 2000.