466 So.2d 344
District Court of Appeal of Florida,
Third District.

BOWMAR INSTRUMENT CORPORATION,
Appellant/Cross-Appellee,
v.
FIDELITY ELECTRONICS, LTD., INC.
and Fidelity Electronics International Sales Company, Appellees/Cross-Appellants.

Nos. 83–2752, 84–311 and 84–2819. | March 5, 1985. | Rehearing Denied April 15, 1985.

The Circuit Court, Dade County, Richard Yale Feder, J., held that parties who offered summary through testimony of witness were not required to give written notice of their intention to use summary, and appeal was brought. The District Court of Appeal held that although technical violation of statute authorizing use of summary occurred when parties offered summary through testimony of witness without giving written notice of their intention to use summary, that violation caused no substantial harm to opposing party.

Affirmed.

West Headnotes (2)

[1] Evidence
Grounds for Admission of Secondary Evidence

Evidence
Preliminaries to Admission of Secondary Evidence

Statute which authorizes use of summary when it is not convenient to examine in court the contents of voluminous writings, recordings, or photographs, and which requires party intending to use such summary to give timely written notice of intention to use summary, applies not only to written summary which party intends to offer in evidence, but also to summary which is offered through testimony of witness. West's F.S.A. § 90.956.

2 Cases that cite this headnote

[2] Appeal and Error
Secondary and Parol Evidence

Although technical violation of statute authorizing use of summary occurred when parties offered summary through testimony of witness without giving written notice of their intention to use summary, that violation caused no substantial harm to opposing party, as record reflected that written summary to which witness referred and the data underlying the summary were in fact made available to opposing party sufficiently in advance of presentation of this testimony so as to enable opposing party to adequately prepare to voir dire and cross-examine the witness. West's F.S.A. § 90.956.

2 Cases that cite this headnote

Attorneys and Law Firms

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Before BARKDULL, HUBBART and DANIEL S. PEARSON, JJ.

Opinion

PER CURIAM.

[1] [2] Contrary to the ruling of the trial court, we are of the view that Section 90.956, Florida Statutes (1983), [1] applies not only to a written summary which a party intends to offer in evidence, but also to a summary which, as in the present case, is offered through the testimony of a witness. We nonetheless affirm the trial court's decision to admit the summary testimony because the record reflects that the written summary to which the witness referred and the data underlying the summary were in fact made available to the appellant sufficiently in advance of the presentation of

this testimony so as to enable the appellant to adequately prepare to voir dire and cross-examine the witness. Therefore, although a technical violation of Section 90.956 occurred when the appellees failed to give written notice of their intention to use the summary, that violation caused no substantial harm to the appellant. *See S. Kornreich & Sons, Inc. v. Titan Agencies, Inc.*, 423 So.2d 940 (Fla. 3d DCA 1982).

1 Section 90.956, Florida Statutes (1983), provides:

> "When it is not convenient to examine in court the contents of voluminous writings, recordings, or photographs, a party may present them in the form of a chart, summary, or calculation by calling a qualified witness. The party intending to use such a summary must give timely written notice of his intention to use the summary, proof of which shall be filed with the court, and shall make the summary and originals or duplicates of the data from which the summary is compiled available for examination or copying, or both, by other parties at a reasonable time and place. A judge may order that they be produced in court."

The federal counterpart, Fed.R.Evid. 1006, provides that only the underlying source material be made available to other parties, not that the summary itself be made available. *See United States v. Foley*, 598 F.2d 1323 (4th Cir.1979), *cert. denied*, 444 U.S. 1043, 100 S.Ct. 727, 62 L.Ed.2d 728 (1980).

We have considered the remaining points on appeal and the point on appellees' cross-appeal and have concluded that no error has been demonstrated.

Affirmed.

Parallel Citations

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