Tenth Circuit

Legal Advisor

Jerry Hill, State Attorney

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Today we inagurate a new project about which I am most excited -- the Legal Advisor.

I view this monthly newsletter as an opportunity to share with you new developments in the law and solutions to particular problems which we have encountered so that we may as a team bring the most effective law enforcement possible to the Tenth Circuit.

Four months ago we began a bold experiment in Polk County when we created our new felony intake system. At that time, I told my staff that this new system would work only if we had the support and cooperation of law enforcement. Well, today Intake is operating beyond our best expectations and we are receiving compliments from throughout the criminal justice system for the improvements in the product we are turning out.

I am fully aware that the procedural changes caused concern and in some instances, dissatisfaction. You have, nevertheless, responded admirably. And so I would like to thank you and to ask you to keep up the good work.

I and all of the staff of the State Attorney's Office bring you greetings and best wishes for a Merry Christmas and a joyous New Year.

FROM THE COURTS

Edited by Chip Thullbery

A new ruling on Miranda warnings

The defendant was arrested on charges of kidnapping and sexual battery.

He was given his Miranda rights and signed a waiver.

He then spoke with the police for approximately an hour and a half, giving a confession.

At that point detectives asked him if he had ever picked up prostitutes in the area.

He stated that he would prefer not to answer that question, and detectives then began to show him photographs of several murder victims.

He then said that the complexion of things had changed, and that he thought he might need an attorney.

However, the detectives continued the questioning and he subsequently confessed to a murder for which he was later convicted.

On appeal, the Supreme Court reversed, holding that when the defendant made the equivocal statement about needing an attorney, the detectives should have attempted to clarify the request for counsel.

Since they did not do that, the confession was involuntary and inadmissible.

Long v. State, 12 FLW 578 (Fla., Nov. 12, 1987).

What makes a kidnapping

In three recent cases, Florida courts have ruled on whether a defendant's actions constituted a

(See "Kidnapping" next page)

"Kidnapping"

kidnapping.

In one case, the evidence showed that as the victim was leaving a public restroom, the defendant entered and forced her into a stall where he attempted to commit sexual battery.

However, she escaped.

The facts of the second case were that the defendant broke into a house where he tied a husband and wife in their bed, cut the husband's ear, took money and jewelry and left in one of their cars.

Finally, the evidence in the third case showed that two defendants entered a home with an intent to steal a safe.

When they discovered two teenage girls asleep in one of the bedrooms, they woke them and threatened them with a knife and a shotgun.

After a brief struggle they tied the girls up with a telephone cord.

While one guarded the girls the other searched for the safe which he was unable to find.

However, they took some cash and jewelry and left.

In each of the three cases, the Courts found that the defendants had committed a kidnapping.

Lamarca v. State, 12 FLW 2249 (Fla. 3d DCA Sept. 15, 1987), Sanborn v. State, 12 FLW 2475 (Fla. 3d DCA Oct. 27, 1987), Merritt v. State, 12FLW 2695 (Fla. 1st DCA Dec. 1, 1987).

When a defendant has no right to counsel at line-up

The defendant was charged with first degree murder and armed robbery.

He filed a motion to suppress the results of a line-up based on the fact that he was denied counsel at the line-up.

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"Line-up"

The court denied the motion and he was convicted as charged.

On appeal, the Second District affirmed, holding that the defendant had no right to counsel at the line-up because although he was under arrest at the time, formal charges had not been filed and he had not received a first appearance hearing.

McHisney v. State, 12 FLW 2356 (Fla. 2d DCA Oct. 2, 1987).

Stealing a moped is grand theft

The defendant was charged with and convicted of the grand theft of a moped over five brake horsepower.

On appeal, the Fourth District affirmed, holding that a moped over five brake horsepower is a motor vehicle for purposes of the grand theft statute.

Coates v. State, 12 FLW 2381 (Fla. 4th DCA October 7, 1987).

It's not always necessary to knock and announce

The defendant was charged with five drug offenses and filed a motion to suppress.

The motion was based on the following facts: Two Tampa police officers disguised as Water Department employees knocked on the defendant's door and asked him to come outside and move a car so they could repair a broken water pipe.

The defendant complied but locked his door as he exited.

After he moved the car, the officers told him they needed to inspect pipes inside the home.

When the defendant opened the

(See " Announce" next page)

"Announce"
door, the two officers identified themselves and advised him they had a warrant to search the premises.

The search produced the drugs on which the charges were based.

The trial court granted the motion to suppress, ruling that the officers had violated Florida's Knock and Announce Statute by gaining entry under false pretenses.

On appeal, the Second District reversed, holding that there was no violation of the Knock and Announce Statute because the officers did not make a forced entry into the residence.

State v. Gray, 12 FLW 2562 (Fla. 2d DCA Nov. 13, 1987).

INVESTIGATIVE PROCEDURES

By Mike Cusick

A common issue in theft cases is determination of the value of the stolen property (unless, of course, a statutory exemption exists, such as that for motor vehicles, firearms and fire extinguishers).

If the value of the stolen property is $300 or more, the defendant can be charged with grand theft.

If it is worth less than $300, the charge is petit theft.

The general impression is that the value of the property is the cost to replace the stolen item.

This general idea is not the case.

The ordinary standard is that the value of the property is its fair market value at the time of theft.

The market price is what a willing buyer would pay to a willing seller for the item.

Once you understand what the test is for value, the problem becomes fiding a witnes who can testify to the fair market value of the property.

Perhaps the easiest way to understand what is required of the

witness is to review a case in point.

In Taylor v. State, 425 So. 2d 1191 (Fla. 1st DCA 1983), the issue on appeal was whether the State had established through competent evidence that the stoleen property was worth $100 or more (this was prior to the increase in the statute to $300).

The defendant broke into a busines and stole a CB radio.

The manager of the business testified that the CB was purchased for $249 eight months prior to the theft and he was very familiar with it.

He also stated that he did not deal in used merchandise and had no idea as to the exact value of the CB at the time of its theft.

The appellate court had to decide if the manager was competent to testify as to the value of the CB.

It recognized that the owner usually knows something about the quality, cost and condition of his property. It went on to say, however, that mere ownership does not automatically qualify an owner to testify as to his property's value.

The witness must have personal knowledge of the market value of the property when it was stloen and that knowledge comes from experience in dealing with property similar in condition to that which was stolen.

The court found that the manager was not competent to testify as to the value of the property when it was stolen.

The court said that while the maanger was competent to testify to the value when the CB was purchased, he did not have the experience to testify to its used value.

Where a witness is not competent to testify to value, the court listed four factors which should be used to establish the property's market value.

Those factors are: (1) the original market value (2) the

manner in which the item is used; (3) its general condition; and (4) its depreciation percentage.

The court found that the manager had only testified to the first factor.

Since the other factors were missing, it reversed the defendant's conviction for grand theft and ordered a judgment be entered agaisnt the defendant for petit theft.

When we review a grand theft case in Intake Division, we are looking in the witness affidavits and transcripts for evidence of the fair market value of the stolen property.

Is there an experienced witness who is competent to testify to the value of the property when it was stolen?

Or, is there a witness who can testify to the four factors outlined in the Taylor case?

Therefore, when you are completing a grand theft investigation, it is important that you cover this issue in your witness affidavits and transcripts.

This is especially the case where the market value of the property is in the range of $300 to $700.

It is just those type of cases that the value of the property may be a contested issue should the case go to trial.

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LEGAL ADVISOR

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