Tenth Circuit

Legal Advisor

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State Attorney's Office prosecutors have developed a handbook for conducting effective taped interviews and taking taped statements, and a guide designed to help worthless check victims get their money back faster.

August Legal Advisor also reports on Florida court system decisions relating to police operations and procedures.

INVESTIGATIVE PROCEDURES

By Mike Cusick

Making the best taped statements

When taking taped statements from witnesses, it is important that you cover all of the elements of the offenses and other surrounding issues.

It is a waste of time to simply turn on the tape recorder, let the witness say what he has to say, and then turn it off.

When you are taking a taped statement, you are acting as an investigator.

It is important that you obtain from each witness all of the information that the witness has about the case.

Please try to use the following suggestions when making taped statements:

1. Go over the information that the witness has before taking the taped statement. Indicate to the witness what information is relevant and what is not. Have the witness determine the names, dates and addresses as correctly as possible so that he doesn't have to fumble on tape.

(2) Start the tape. Identify the case, yourself, the witness, the date and time.

(3) Swear in the witness -- "please raise your right hand. Do you solemnly swear to tell the truth, the whole truth and nothing but the truth, so help you God?" -- or similar language.

(4) Go over the details with the witness. Use the State Attorney's Felony Law Manual as an outline.

(5) Make sure the witness answers "yes" or "no" instead of "uh" or "um".

(6) When the witness is telling about what two or more people said or did, make sure the witness details what each person said or did. Do not allow the witness to

use "they said" or "they did".

(7) If the witness talks quickly or is hard to understand, have him talk slowly.

(8) If he is describing an incident, let him tell his story, but keep him on track.

(9) Once he has told his story, go back and cover any other elements or issues that must be included.

(10) When a victim or witness is identifying property or a person, make sure he indicates whether or not he is positive of his identification. When identifying property it is important for him to indicate why he is positive.

(11) The following questions should be asked only of defendants and suspects: (a) Have you given this statement freely and voluntarily, (b) Has anybody threatened or coerced you into giving this statement, (c) Have you been made any offers or been given any rewards to make this statement?

(12) If the person does not speak English well, use an interpreter. Only the questions and answers in English need to be transcribed.

I want my money and I want it now

Hints on how you can help your victims get their money back faster

Merchants want their money back quickly -- and we don't blame them.

We are ready to prosecute worthless checks and we can do it quickly if the information which is brought to us is complete and correct.

As I think back over the many hundreds of worthless checks which I have prosecuted, I find that the victims often need to be reminded of the importance of each piece of information which we request on the worthless check affidavit.

The problems which most delay the recovery of the merchants' dollars can be grouped as follows:

(1) The date of birth, race, sex and height of the person who passed the check is, of course, necessary.

(2) If no identification were taken at the time the check was passed, the check-cashing card, or rental agreement which shows the defendant's identification must be photocopied and brought with the affidavit.

(3) All of the blanks on the affidavit must be filled in.

(4) The green "certified mail" card must accompany the affidavit unless the check is returned by the bank due to "account closed". The original copy of the letter which was sent to the defendant demanding payment of the check mnust be included with the affidavit.

"Original copy" sounds strange, but I am referring to the copy that the merchant keeps when he sends the demand letter to the defendant.

(5) The affidavit must include the full name and address of the person who took the check from the defendant.

(6) The merchant must swear to the affidavit in front of a notary, clerk of the court or a police officer. Please impress upon the person who is swearing to the truth of the facts that he must be ready to defend each bit of information as as being true.

(7) If new information is added when we return the affidavit to the victim, the new information must be sworn to.

(8) Post-dated, third-party, stop-payment, uncollected funds or checks more than six months old will not be accepted for prosecution.

(9) The law does not allow us to prosecute checks which were taken with the understanding that the receiver of the check would hold it for any period of time before he would deposit it into the bank.

If the merchant is unable to give you all of the information or materials which are required, you may suggest that he take his case to small claims court. There the burden of proof is much lower.

FROM THE COURTS

Edited by Chip Thullbery

An anonymous tip can support a stop

At approximately 1:30 one morning, the police received an anonymous tip that two black males were removing a tire from a vehicle in the parking lot of an apartment complex.

The vehicle was parked on the west side of the complex and the information indicated tht one of the two men was wearing a white T-shirt and brown shorts.

The police arrived at the complex five minutes after receiving the tip.

The parking lot was deserted except for two black men, one of whom was earing a white T-shirt and blue shorts.

The men were observed within four feet of a vehicle which was missing the right rear tire.

The officers detained and questioned the men.

They found warrants outstanding for the defendant and placed him under arrest.

A search incident to the arrest revealed cocaine.

The trial court denied a motion to suppress the cocaine, and the defendant appealed.

The Third District affirmed, holding that the tip provided a founded suspicion of criminal activity sufficient to justify the stop of the defendant.

Bussey v. State, 13 FLW 1705 (Fla. 3d DCA, July 19, 1988).

An officer's experience may justify a search

At approximately 10:00 P.M. an officer observed the defendant and two other men standing by a street in an area known to police for narcotics transactions.

The officer was in plain clothes, but the defendant knew him to be a police officer.

As he approached the defendant the two companions ran away.

The defendant appeared startled and tried to shove a plastic bag into his pocket.

The officer could see two inches of the plastic bag but could not see the contents of the bag.

He testified, however, that based on his experience plastic bags were the most common way to package narcotics.

Further, he had never recovered a plastic bag from anyone in that area in which there was simply an innocuous, non-criminal item.

He also stated that it was very common for individuals who were approached in the area to either try to destroy the evidence, to run away with it, or to throw it away as they ran.

The officer seized the bag and observed what he believed to be cannabis in it.

He then placed the defendant under arrest and searched him, finding cocaine.

The trial court granted the motion to suppress, but the First District reversed, holding that based on the totality of the circumstances and the officer's experience and knowledgehe had sufficient probable cause to seize the plastic bag and arrest the defendant.

State v. Casey, 13 FLW 1717 (Fla. 1st DCA, July 21, 1988).

An inmate on furlough cannot escape

While in jail the defendant pled guilty to several charges and the court ordered a presentence investigation.

The court also granted the defendant's request for a twenty-four hour furlough from jail.

The defendant failed to return and was subsequently charged and convicted of escape.

On appeal, the Florida Supreme Court reversed the escape conviction, holding that the defendant was not confined at the time he failed to return to the jail.

Pumphrey v. State, 13 FLW 433 (Fla. July 14, 1988).

A search warrant does not always justify a search of bystanders

In this Polk County case, the defendant was charged with possession of cocaine and filed a motion to suppress.

The evidence at the hearing on the motion showed that officers obtained a search warrant for a house in which they believed there were illegal drugs.

The search warrant authorized the officers to search any person in the yard of the house who they believed to be connected with the illegal activity in the house.

The officers conducted the search on the home and found nothing criminal inside.

They then searched those people standing in the yard including the defendant.

They found cocaine on the defendant.

The trial court denied the motion to suppress and the defendant was convicted.

(See "bystanders" next page)

"bystanders"

On appeal, the Second District reversed, holding that the search warrant did not give the officers the right to search the defendant because the police lacked a reasonable belief that the defendant was involved in criminal activity.

Julian v. State, 13 FLW 1440 (Fla. 2d DCA, June 24, 1988).

The prisoner need not be on prison grounds to be guilty of possession of contraband by a prisoner

The defendant was charged with possesion of contraband by a prisoner.

At his trial the evidence showed that he was an inmate in a state correctional facility and that he had been observed in possession of marijuana at a time when he was not on the grounds of the correctional institution.

He was convicted as charged and appealed, arguing that the conviction could not stand because he had not actually been in a correctional facility at the time he committed the crime.

The First District rejected this argument and affirmed, holding that a state prisoner is guilty of possession of contraband whether he is in a correctional facility at the time or not.

Brooks v. State, 13 FLW 1768 (Fla. 1st DCA, July 27, 1988).

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