Tenth Circuit

Legal Advisor

Jerry Hill, State Attorney

Vol. 2, No. 2 February 1988

Getting the most from a defendant's statements, clearing out all additional cases when a defendant confesses to a series of crimes, and documenting all priors for fourth offender DUI cases.... these are Felony Intake Director Mike Cusick's concerns in February Legal Advisor.

Also, State Attorney Jerry Hill states SAO's position on sentencing guidelines and prison gain time for convicts inside this issue.

Investigative Procedures

By Mike Cusick

There are four topics I want to cover this month.

The purpose of this column is to help you improve the quality of the investigations submitted to this office.

We don't like to have to decline to prosecute a guilty defendant and we want to do our best to help you make sure we have proveable cases.

Please remember that our standard for filing an information is whether there is substantial probability of conviction based upon legally admissible evidence if the case goes to trial.

Defendant's statements

The first topic I want to talk about involves statements from the defendant.

Something we look for in every arrest case is to see what statements made by the defendant have been documented in the officers' reports.

Sometimes the reports don't even mention whether or not the defendant was questioned!

Understandably there are cases where the defendant refused to make any statement, but the report should at least document the defendant's refusal to make a statement.

Even if the defendant denies his involvement in the crime, it is important to document his story.

First of all, he may actually be telling the truth. Even when he isn't, by detailing his story you limit the defendant's defenses later on.

If he has given you an alibi defense and it turns out that the eyewitnesses have positively identified him as being at the scene, your report of his story may prevent him from using some other form of defense (such as self-defense) at his trial.

The earlier in the case you can pin the defendant to a story, the less chance he has to come up with something creative.

Finally, once we know his story, other evidence or witnesses may be located to disprove it.

Multiple offense reporting

Sometimes a defendant is arrested and is willing to confess to a string of crimes.

It is important that the investigating officer take time to detail the defendant's confession to each specific event.

We have received, lately, some cases where the defendant generally confesses to a series of crimes.

In these cases, the officer failed to take time to go into the specifics of each case. Without that, sometimes we don't have enough to prosecute the defendant.

And, as a practical matter, it is usually impossible to go back to the defendant later and try to get the detailed statement.

In the past couple of months, investigators from both the Bartow Police Department and the Polk County Sheriff's Department have had defendants who confessed to strings of burglaries.

In at least two instances, the investigators drove the defendant around to the various crime scenes and took a taped statement from him about what he remembered about each burglary.

These statements were excellent evidence against the defendant.

Four-time DUI defendants

Our office is stepping up its prosecution of fourth-time DUI defendants.

With felony petit theft offenders, a certified copy of the Judgement and Sentence is needed to show the defendant's prior convictions.

In fourth offender DUI cases, we rely on the certified copy of the defendant's driving record.

If you have a fourth offender DUI case, you need to submit the certified traffic record with the felony packet.

Injury to victim as a charging element

In cases where a victim's injury is an issue in making a charging decision, we are requesting that you send us copies of the medical records.

We have provided all of the departments with a medical release form to be signed by the victim (and the parent if a minor).

If you have a problem with a hospital releasing records with the waiver, please contact me.

Normally, all we need are the emergency room records. If the patient spends two weeks in the hospital, we don't need the records for the whole two weeks.

We are looking for information about the seriousness and nature of the injuries. Usually, this is all contained in the initial reports from the emergency room.

Hopefully, this will cut down on the amount of records you need to obtain and the time it takes to get them.

From the courts

Edited by Chip Thullbery

When Miranda applies

Police discovered the bodies of four victims.

Shortly thereafter, a man who was the ex-husband of one victim and the father of another came to the scene.

A Sheriff's investigator asked him to come to the station in order to take elimination finger prints.

(See "Miranda" next page)

"Miranda"

He agreed, and was taken to the Sheriff's Office by his sister and brother-in-law.

After his arrival, the detective interviewed him for less than one hour because he was a family member of the victims.

He was not under arrest and was free to leave.

He never objected to any of the questions and did not refuse to talk. When the interview was over, he left.

The next day he was arrested for the murders and subsequently convicted.

On appeal, he argued that the statements he made on the first day should have been suppressed because he was not given Miranda warnings.

The Supreme Court rejected this argument because he was not in custody at the time he gave the statements, and affirmed his conviction.

Correll v. State, 13 FLW 34 (Fla. Jan. 14, 1988).

Lack of founded suspicion invalidates stop

Police saw a man walking with an alleged drug dealer in a high crime area.

At the time his fists were clenched in a non-threatening manner. They detained him and during the detention, cocaine was discovered.

Based on these facts a trial court denied a Motion to Suppress, and the defendant pled no contest.

On appeal, the Second District reversed, holding that the officers' observation did not amount to a founded suspicion of criminal activity.

Mosley v. State, 13 FLW 302 (Fla. 2d DCA Jan. 27, 1988).

Carrying firearm while under indictment not a crime

The defendant was charged and convicted of carrying a firearm while under indictment in violation of section 790.07(2), Florida Statutes (1987).

The Fourth District reversed, holding that in so far as section 790.07(2) prohibits the carrying of a firearm while under indictment, it is unconstitutional.

Potts v. State, 13 FLW 78 (Fla. 4th DCA Dec. 30, 1987).

An unusual search warrant approved

Emery Air Freight received an envelope addressed to a man, which broke open revealing cocaine.

Emery notified drug enforcement agents who obtained a search warrant for the man's residence on the basis that they were going to make a controlled delivery of the cocaine.

After the delivery, the police executed the warrant and arrested the man.

The trial court granted a Motion to Suppress, ruling that the search violated section 933.18, Florida Statutes, which provides for the issuance of a search warrant for a dwelling only when the law relating to narcotis or drug abuse is being violated therein.

On appeal, the Supreme Court reversed, holding that the anticipatory search warrant did not violate the provisions of the U.S. Constitution, the Florida Constitution or section 933.18.

Bernie v. State, 13 FLW 17 (Fla. Jan. 7, 1988).

Who was entrapped and who wasn't

A man agreed to sell cocaine to a police informant after the informant threatened him with a gun.

He then obtained the assistance of two other men in making the delivery.

When they did so, they were arrested for Trafficking in Cocaine.

Subsequently, the Court dismissed charges against the first man, ruling that he was entrapped by the outrageous conduct of the police informant.

However, the Court upheld the conviction of the other two men becuase they had no contact with the informant.

State V Garcia, 13 FLW 254 (Fla. 2d DCA Jan. 22, 1988).

State Attorney's Message

By Jerry Hil

There is a crisis in the criminal justice system.

It needs your immediate attention, not only as law enforcement officer, but also as citizens.

Recently an article in a local newspaper told the story of one defendant who was sentenced to five years in prison in December 1985.

He had committed various crimes ranging from Burglary to Robbery.

He was released from prison in September 1987 -- less than two years later -- and today stands charged with murder.

This is not an isolated incident, let me give you another.

In January of last year a court in Polk County sentenced a defendant to three years in prison to be followed by seven years probation.

This was for four counts of robbery.

In September -- only nine months later -- he was released.

Today he sits in jail, charged with committing yet another robbery.

The culprit behind these early releases is the legislature's system of "gain time".

This unjust system can give a prisoner as much as two days off his sentence for every day he serves.

When I explain this to concerned citizens their responses are that my office and the Courts should impose longer sentences.

Unfortunately those longer sentences are not possible because of the Florida Legislature's system of sentencing guidelines.

To put it bluntly, we are doing all the the law currently allows.

I strongly urge each of you to call upon your state legislative delegation to reform Florida's system of sentencing and incarceration.

We must provide judges with the power to impose sentences which will adquately protect the public against dangerous criminals and insure that each criminal will serve all of the sentence he deserves.

Keep up the good work.

Tenth Circuit

LEGAL ADVISOR

Editorial Staff

Jerry Hill.....Publisher
Chip Thullbery.....Managing Editor
Mike Cusick.....Legal Content Editor
Carl Weaver.....Layout and Makeup

The "Tenth Circuit Legal Advisor is published by the Office of the State Attorney, Drawer SA, P.O. Box 9000, Bartow Fl 33831-9000, (813) 534-4800