

Tenth Circuit

Legal Advisor

Jerry Hill, State Attorney



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Detailing how to charge drug counts in cases with a single sample of the controlled substance, then explaining how to get various samples from defendants, Intake director Mike Cusick leads off June Legal Advisor with his Investigative Procedures section.

Picking up on felony petit theft filings from last month, new decisions on this issue are explained in the From the Courts.

State Attorney Jerry Hill announces formation of SAO'S Career Criminal division.

INVESTIGATIVE PROCEDURES

By Mike Cusick

A change in filing felony petit theft

A recent Florida Supreme Court case has restricted the instances when felony petit theft can be charged (see State v. Jackson below).

Previously, we have charged the defendant with felony petit theft where the defendant had prior convictions for robbery or grand theft.

The Supreme Court ruled that the two prior convictions must be for petit theft.

Therefore, we cannot rely on prior robbery or grand theft convictions for this charge.

Despite the change caused by this decision, we still wish to encourage you to charge felony petit theft where the defendant has two prior convictions for petit theft.

We want to assist you in determining at the start of the case whether or not the defendant can be charged with felony petit theft.

If the defendant's prior convictions are from Polk County, you can contact our offices in Winter Haven, Lakeland, or Bartow to verify the defendant's record.

How to charge drug counts based on a single sample

Another recent case has reduced the charging options in drug cases.

We can no longer charge a defendant with (1) sale and (2) possession with intent to sell

and (3) possession of a controlled substance for the same controlled substance.

Only one of the three charges
(See "counts" next page)

"counts"
can be filed.

controlled substance.

Similarly, a defendant cannot be charged with (1) purchase and (2) possession with intent to purchase and (3) possession of the same

The defendant should be charged only with the highest proveable offense based on the facts and circumstances of the case.

How to obtain samples from the defendant

During an investigation, you may need to obtain samples from the defendant -- i.e., blood, hair, handwriting samples, voice exemplars, appearance in a line-up, etc.

We have "person" search warrant packets that you can obtain if your department doesn't already have some.

Unless the defendant consents to your request, it will be necessary for you to get an order from the court.

Once an information has been filed against a defendant, the same type of samples are obtained by a motion before the judge assigned to the case.

Until an information has been filed, such evidence may be obtained with a search warrant.

To obtain samples, contact the assistant state attorney in the trial division who has been assigned to the case.

FROM THE COURTS

Edited by Chip Thullbery

When a resisting a merchant charge can be filed

The defendant was charged with petit theft and resisting a merchant arising from the same incident.

He was convicted as charged.

On appeal, the Supreme Court reversed, holding that the State may not charge a defendant with

resisting a merchant until the defendant has been found guilty of an underlying theft because one of the elements of the crime of resisting a merchant is the underlying theft charge.

K.C. v. State, 13 FLW 300 (Fla. May 5, 1988).

Felony petit theft restricted

The defendant was convicted of felony petit theft based on the fact that he had two prior grand theft convictions.

On appeal, the Supreme Court reversed, holding that in order for a

defendant to be charged with felony petit theft, the prior theft convictions must be for petit theft and not grand theft.

State v. Jackson, 13 FLW 352 (Fla. June 2, 1988).

No expectation of privacy in common hallways

The defendant was charged with possession of cocaine and filed a motion to suppress.

The evidence upon which the

motion was based showed that police officers entered the grounds of a thirty-unit apartment building by scaling a six feet high wall at

(See "privacy" next page)

"privacy"

the rear of the property.

They then entered a hallway of the apartment building which was unlocked and opened to the public.

there they saw a man throw down a concealed gun and run into an apartment.

They followed the man, and stepping into the open door, they saw the defendant holding a bag of cocaine.

The trial court granted the motion to suppress, and the State appealed.

The Third District reversed, holding that there was no expectation of privacy in the common hallway, and that the police lawfully pursued the man to the defendant's apartment.

State v. Batista, 13 FLW 1062 (Fla. 3d DCA, May 3, 1988).

Probable cause needed to take a suspect to the station

The defendant was charged with robbery and filed a motion to suppress fingerprint evidence.

Evidence showed that police stopped a vehicle which the defendant was driving because the passenger in the vehicle fitted the description of a robbery suspect for which a warrant had been issued.

Because the defendant's description was similar to that of

the co-perpetrator of the robbery, the police took the defendant to the police station where he was fingerprinted.

They determined that his fingerprints matched those found in the robbery.

The trial court denied the motion to suppress, but on appeal, the Second District reversed, holding that the detention of the defendant

(See "cause" next page)

"cause"
at the police station required
probable cause.

exist in this case to justify
detention.

Sufficient probable cause did not

Harrison v. State, 13 FLW 1168
(Fla. 2d DCA, May 20, 1988).

STATE ATTORNEY'S MESSAGE

By Jerry Hill

Our career prosecutors vs. their career criminals

In its recent session the legislature gave us a new law enforcement tool by setting up the framework for a Career Criminal Prosecution Program. This program allows law enforcement agencies and the State Attorney's Office, working together, to target repeat felony offenders for intense prosecution efforts and lengthy prison sentences.

I intend to take full advantage of this law, and to that end I am establishing a three-attorney Career Criminal Division. This specialized unit will be headed by one of our most experienced prosecutors, David Bergdoll. He will be joined by Brad Copley and Bill Maloney. In the coming months we will be working out the operating details for this division.

With your cooperation, I believe that we will be able to put those who most deserve to be behind bars to stay.

Keep up the good work.

**Tenth Circuit
LEGAL ADVISOR**

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