Tenth Circuit

Legal Advisor

Jerry Hill, State Attorney

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How should law enforcement officers handle cases with multiple suspects? What does it take to charge a suspect as a principal defendant in multiple suspect cases where one of the suspects didn't actually take part in the crime?

Felony Intake Division's Mike Cusick explains how to deal with these issues in March Legal Advisor.

INVESTIGATIVE PROCEDURES

By Mike Cusick

"Just being there" isn't enough

Some officers have the impression that a person can be charged with a crime when that person is present during the commission of a crime by another and does nothing to prevent the commission of the crime, or to voice his own non-involvement.

This impression is incorrect.

Mere presence during the commission of a crime, even with knowledge that the crime is going to occur is not a basis for charging the non-participant with the crime.

In order to charge a person with the commission of a crime, normally, the person must actively participate or must be guilty as a principal.

The easiest way to understand the term "principal" is by looking at the standard criminal jury instruction.

Principals

"If two or more persons help each other commit or attempt to commit a crime and the defendant is one of them, the defendant must be treated as if he had done all of the things the other person or persons did, if the defendant:
(1) knew what was going to happen, (2) Intended to participate actively or by sharing in an expected benefit, and (3) Actually did something by which he intended to help commit or attempt to commit the crime."

As you can see by this instruction, knowledge that the crime is going to occur is only one of three requirements necessary for a person to be chargeable as a principal.

Without evidence of the other two, the person cannot be charged.

Another problem area in making

a charging decision involves the joint possession of contraband.

Usually this problem arises in the execution of a search warrant or during a motor vehicle search.

When an item is in the hand of (or on) the person, or within ready reach or under the control of a person, it is in the actual possession of the person.

If two or more persons have joint control or possession of a place, and the contraband is not in plain view, evidence must be presented to show knowledge of the contraband.

The typical problem arises when contraband, not in plain view, is discovered during a search.

If two or more people exercise control over the place where the contraband was found, your reports must reflect how you can show that the defendant knew of the presence of the contraband.

The most common method of proving knowledge is through admissions by the defendant.

It is most important that your report clearly and specifically outlines the defendant's statements.

Absent an admission, fingerprints may be the next best source of proof.

If a comparison cannot be made within days, it may be wise to hold off making an arrest until you get the results.

Finaly, proof of knowledge may be supplied through an eyewitness who can connect the defendant to the contraband.

Remember, the State must prove beyond a reasonable doubt the the defendant possessed the contraband.

We cannot charge a defendant solely on hearsay or on the assumption that the defendant should have known that the contraband was where it was located.

It is important for you to indicate on the arrest or complaint afffidavit the names of all codefendants.

We try to file all codefendant cases together.

This will reduce the number of Request for Information forms we send to you, since we will only send one for every group of codefendants.

It will also cut down on the number of copies you need to send to us.

We require only two copies of the documentation for each Request for Information that is sent to you.

FROM THE COURTS

Edited by Chip Thullbery

Consent search upheld

The defendant was charged with trafficking in cocaine and filed a Motion to Suppress.

Evidence at the hearing on the motion established that after he had an accident, he asked a person who had stopped to help him if that person would take his suitcase.

The person did so but later became suspicious and turned the suitcase over to police, who searched it and found cocaine.

The trial court denied the motion, and the defendant was convicted.

The First District affirmed, holding that a person to whom property is entrusted may give police consent to search property in his custody.

Johnson v. State, 13 FLW (Fla. 1st DCA, Feb. 4, 1988).

Police operation not entrapment

The defendant was charged with burglary and petit theft and filed a motion to dismiss, alleging entrapment.

At the hearing on his motion, the evidence showed that in an effort to reduce the number of burglaries of stores and cars in downtown Miami, the police department conducted a decoy operation in which they placed a car on the street, leaving the driver's door unlocked and the windows closed.

On the back seat they placed a radio.

Subsequently, officers observed the defendant enter the car and steal the radio.

The trial court denied the motion, and the defendant was convicted as charged.

The Third District affirmed, holding that the police actions did not amount to entrapment.

Donaldson v. State, 13 FLW 401 (Fla. 3rd DCA, Feb. 9, 1988).

What proves value in a retail theft

The defendants were charged with grand theft for stealing ten pairs of pants from a retail store.

At their trial, the only evidence of value which the state produced was the price tags on the pants.

They were convicted as charged.

On appeal, the Third District held that the price tags were sufficient evidence by which the State could meet its burden of proof as to the value of the pants.

Scott v. State, 13 FLW 387 (Fla. 3rd DCA, Feb. 9, 1988).

Confidential informant protected

The defendant was charged with trafficking in cocaine based on the execution of a search warrant at his home.

He filed a motion to disclose a confidential informant who had made the buy at the home which had provided the basis for the search warrant.

The State responded that the confidential informant was not a participant in the search warrant and would not be referred to or called as a witness at trial. The trial court denied the motion.

The defendant was subsequently convicted as charged and appealed. The First District affirmed, holding that the trial court properly protected the identity of the confidential informant.

Garcia v. State, 13 FLW 425 (Fla. 1st DCA, Feb. 10, 1988).

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