

Tenth Circuit

# Legal Advisor

Jerry Hill, State Attorney



Vol. 2, No. 5

May 1988

*Felony Intake director Mike Cusick addresses a number of procedural points relating to charging and case building in May Legal Advisor.*

*Investigative stops received considerable attention from Florida's Appeals and Supreme Court the first half of this year. The Courts' findings, as they relate to law enforcement officers, are explained in this issue.*

*Also, the State Attorney expresses his appreciation for the work of law enforcement retirees Hal Higginbotham and Wayne Wyant.*

# INVESTIGATIVE PROCEDURES

By Mike Cusick

## **The defendant needs a copy of his criminal affidavit with his warrant**

We get many calls for defendants who have been arrested on warrants.

They want to know what offenses they have been charged with.

When warrants are issued, we include a copy of the criminal affidavit with the warrant.

Apparently the defendant's copy of the affidavit is not be given to the defendant at the same time that the warrant is served.

Please be careful to give the defendant a copy of the affidavit at the same time that you give him the copy of the warrant.

---

## **How to name the victim when the victim is a business**

Often the victim of a crime is a business.

In those instances, we must allege in the information the correct legal name of the business in your case filing documents.

Sometimes the business is a corporation.

We need you to include the full corporate name in these cases.

At other times, the business is owned by one or more persons doing business under a specific name.

In those cases, you need to list the name of the owners and the

d/b/a under which they operate.

It is wrong to assume that the common name by which the business is known is always its correct legal name.

Find out the correct legal name

from a knowledgeable employee or from the business license.

Obtaining this information up front will prevent our having to send to you for it later.

---

### **We sometimes make petit thefts into felonies**

We have increased significantly the number of individuals charged with felony petit theft.

Most of those cases have been brought to our attention by our misdemeanor attorneys.

We are requesting that law enforcement make more of an effort at the start of a case to identify individuals who have been twice convicted of theft.

Once the individual has been identified as a repeat offender, he can be charged with felony petit theft.

We suggest arresting those individuals, or at least obtaining their fingerprints, because it will be necessary later on to have their fingerprints compared with the prints of the judgment and sentence from prior convictions.

---

### **The Felony Law Manuals tell you all the necessary elements**

We want to encourage you to use the Felony Law Manuals which were passed out last year.

Often the follow-up work that we request on a case was listed in the manual as required information.



Use the manual as a check list to see if you have covered all elements of proof required in a charge.

It will guarantee that you have done a more complete investigation.

---

### **The judge must be able to make up his own mind about CIs**

Confidential informants are a useful source for obtaining information to be used as grounds for a search warrant.

If the informant is to remain unnamed in the search warrant, it is necessary to establish that he has a proven track record of reliability.

It is not enough that the affidavit states that the confidential source is reliable.

It is necessary that the judge make his own finding that the confidential source is reliable. Therefore, you must give a short summary of the track record of the confidential source.

It should include items such as the number of times he has supplied information resulting in arrests or convictions, if known,

the number of times he has supplied informations resulting in the seizure of controlled substances or other contraband, and any other type of information which he has supplied which has assisted in criminal investigations.

An important exception to the requirement that the reliability of the confidential source be included in the search warrant involves the controlled purchase of contraband.

If the purchase of drugs is closely monitored by law enforcement it is not necessary to establish the confidential informant's reliability.

It is not necessary since the close monitoring of the informant eliminates the possibility that he fabricated his observations.

## FROM THE COURTS

Edited by Chip Thullbery

### Stop held improper

In the early hours of the morning, an officer observed a car parked in a narrow path in a rural area known for drug activity and as a "lover's lane".

The car's lights were off but the interior light was on and the officer saw four people in the car.

Two of the people bent down as if to put something on the floorboard.

On the basis of these facts the

officer ordered the people out of the car and found cocaine.

Subsequently, one of the occupants filed a motion to suppress which the trial court denied.

On appeal, the Fifth District reversed, holding that the officer was not justified in detaining the four individuals.

Spence v. State, 13 FLW 943  
(Fla. 5th DCA, Mar. 30, 1988).

### Stop held proper

While a police officer was patrolling an area of Tallahassee recognized as a high crime area, particularly for narcotic transactions, he observed a white male in a car that was stopped at a street corner where several black males were standing.

The defendant, who was one of

the black males, entered the passenger side of the car.

The car then drove away and made several turns in the downtown area, driving randomly instead of towards any particular destination.

(See "proper" next page)

**"Proper"**

The defendant was bent over the majority of the time:

The officer stopped the car and ultimately found cocaine.

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

On appeal, the First District affirmed, holding that what the officer saw, in light of his experience, was sufficient to justify a brief investigatory stop.

Adams v. State, 13 FLW 912 (Fla. 1st DCA, April 12, 1988).

**Another stop held proper**

When an officer pulled the defendant over for traffic violations he saw the defendant place something in the console to the right of the driver's seat of his van as if he was trying to hide it.

The officer had the defendant step out of the vehicle, and then he looked in the console area to make sure there was not a weapon there.

In doing so, he found a cocaine rock.

The trial court denied the motion to suppress and the defendant pled no contest.

On appeal, the Fourth District affirmed, holding that the officer had the right based on what he had seen to make a limited search for weapons in the area where he had seen the defendant place something.

Mitchell v. State, 13 FLW 828 (Fla. 4th DCA, March 30, 1988).

**Insufficient Miranda warning invalidates confession**

The defendant was charged with murder and filed a motion to

suppress his confession.

(See "Miranda" next page"



### "Miranda"

The evidence on the motion showed that after officers received information that the defendant had participated in a murder, they asked him to come to the police station.

When he arrived he was taken into an interrogation room where the officers confronted him with the information they had gathered implicating him in the crime.

He was then presented with an advise of rights form which did not advise him of the right to appointed counsel if he could not afford an attorney.

The defendant agreed to talk and gave a confession.

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

On appeal, the Supreme Court reversed the confession, holding that the trial court should have suppressed the confession because the officer's failure to inform the defendant of his right to appointed counsel invalidated the Miranda warning.

Caso v. State, 13 FLW 249 (Fla. April 7, 1988).

### When a BA refusal is not a refusal

The defendant filed a petition to set aside a breathalyzer refusal.

The evidence upon which the motion was based showed that after the defendant was stopped for driving under the influence, the arresting officer asked him to take a breathalyzer test.

The defendant stated that he would not take the breathalyzer test until he could speak to his employer or an attorney.

Within a minute or two, the defendant placed a telephone call to his employer who advised him to take the test.

(See "refusal" next page)

**"refusal"**

The officer, however, recorded a refusal that led to the suspension of the defendant's driver's license.

The trial court denied the petition, but on appeal, the Fourth District reversed, holding that since the defendant's retraction of the initial refusal came moments after

that refusal while he was continuously in the presence of the officer and in circumstances where no inconvenience would result by permitting him to take the test, the officer should have allowed him to do so.

Larmer v. State, 13 FLW 731 (Fla. 4th DCA, March 16, 1988).

**Burglary conviction upheld on unusual facts**

The defendant was charged with, among other things, burglary with the intent to commit an assault.

At his trial, the victim testified that on the day of the crimes, the defendant came to her apartment and she let him in.

After they chatted a few moments, he grabbed her from behind, began choking her, and tried to force her to have sex with him.

She fought him off until the

police arrived.

He was convicted of burglary and appealed, arguing that he did not commit burglary because he was invited to enter the premises.

The Third District rejected his argument and affirmed, holding that even when a person enters a dwelling with permission, if he remains in it with the intent to commit a crime, he is guilty of burglary.

Ray v. State, 13 FLW 763 (Fla. 3d DCA, March 22, 1988).



# STATE ATTORNEY'S MESSAGE By Jerry Hill

## *A salute to two of our finest*

*I would like to take this opportunity to pay tribute to two men.*

*Hal Higginbotham and Wayne Wyant are retiring this month after a combined total of sixty two years service to the criminal justice system of Polk County*

*Hal, who serves as our Intake investigator, and Wayne, who serves as liason officer for the Sheriff's Department, are a constatn source of information and advice for attorneys and officers alike.*

*When these two men go to work, there is no problem which cannot be solved.*

*Their knowledge and dedication will be sorely missed.*

*Thank you, Hal and Wayne, for a job well done.*

### **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 3831-9000, (813) 534-4800.*