Tenth Circuit

Legal Advisor

Jerry Hill, State Attorney

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Florida's legislature has enacted or modified a number of laws so as to improve the effectiveness of law enforcement. Felony Intake director Mike Cusick explains these new acts in November Legal Advisor.

Not to be upstaged, the Florida court system handed down a bevy of decisions relating to police operations and procedures, all explicated in Advisor's From the Courts section.

Investigative Procedures

By Mike Cusick

The legislature helps the police

The 1988 Florida Legislature made several changes in our criminal laws -- changes which will help law enforcement officers in the years to come.

Here are some of the major advantages which the legislature has given us.

787.04 Removal of minors from the state or concealment of minors contrary to state agency or court order.

It is now a third degree felony to remove minors from the state or conceal them contrary to state agency or court order.

It adds the felony of leading, taking, enticing or removing a minor beyond the state's limits or to conceal the location of a minor during a dependency proceding affecting the minor or during the pendency of any information, action or proceeding concerning the alleged abuse or neglect of the minor, after having received notice of the pendency of such investigation, action or proceeding and without permission of the state agency or court in which the investigation, action or proceeding is pending.

It is a defense to this charge that the defendant believed his action was necessary to protect the minor from child abuse as defined in 827.04.

812.015(b) Resisting merchant's recovery of property.

The statute is amended to eliminate the requirement, as decided by the Florida Supreme Court, that a defendant must be convicted of the theft charge before he can be charged with resisting a merchant.

Now the defendant can be charged and tried with resisting the merchant at the same time as the

theft charge.

843.08 Falsely personating an officer.

Increases the penalty for falsely pretending or assuming to be a law enforcment officer to a third degree felony.

If the false personation occurs during the commission of a felony, this offense becomes a first degree felony.

784.046 Restraining orders and injunctions for cases of repeat violence.

Makes protective injunctions available to persons who have been victims of two or more acts of violence by the same person.

One of the acts must have occurred within six months of the filing of the petition for injunction.

A law enforcment officer may arrest a person without a warrant if he finds probable cause to believe the person has knowingly committed an act of repeat violence in violation of the injunction.

One of the elements of this offense is that the defendant must have been served with or have knowledge of the injunction.

In checking with the Polk County Sheriff's Office, I was advised that the Communications Section keeps a record of all individuals who have been served with an injunction and that it is the deparetment's policy to furnish the local police agency with a copy of the proof of service when the injunciotn has been served.

Therefore, it should be possible to verify twenty-four hours a day that an individual has been served with an injunction.

Since the statute allows anyone who has been the victim of two acts of violence to obtain an injunction, you can expect to see a much larger number of injunctions in the coming months.

784.045 Battery on a pregnant victim.

It is aggravated battery, and thus a second degree felony, if a person commits battery on a pregnant victim and knew or should have known that she was pregnant at the time

843.01 Resisting an officer with force, 843.02 Resisting an officer without force.

The definition of law enforcement officer is expanded to include all officers contained within the definition in 943.10. Perhaps the biggest change is the inclusion of state corrections officers who were not previously included in these statutes.

More legislative changes will be detailed next month.

FROM THE COURTS

Edited by Chip Thullbery

A babysitter may consent to a search

The defendant was charged with sexual battery on a child and filed a motion to suppress evidence.

The evidence on the motion showed that she had arranged for a babysitter to stay with her children while she was away.

During this stay, the babysitter discovered photographs of the defendant engaged in sexual activities with her son.

The babysitter contacted law enforcement and allowed them to search the house.

The trial court denied the motion to suppress.

On appeal, the First District affirmed, holding that the trial cour properly denied the motion to suppress because the babysitter had the right to give the officers

(See "consent" next page)

"consent"

consent to search.

Cook v. State, 13 FLW 2226 (Fla. 1st DCA, September 27, 1988).

What is not in a search warrant affidavit may be as important as what is in it

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

The evidence on the motion showed that police officers obtained a warrant on March 31, 1986.

It was based on an affidavit which related to a controlled buy of drugs by a confidential informant at the defendant's residence sometime between March 17, 1986 and March 20, 1986.

The officer who obtained the warrant testified that after the controlled buy a further effort was made to purchase drugs from the defendant's residence, but that attempt failed.

He did not mention the second attempted buy in his affidavit.

The trial court denied the motion to suppress, but on appeal the Second District reversed, holding that based on the facts which the officer did not place in the warrant, there was not probable cause for the issuance of the warrant.

Sotolongo v. State, 13 FLW 2122 (Fla. 2d DCA, Sept. 7, 1988).

Probable cause to search a car means the whole car can be searched

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

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"search"

The evidence on the motion showed that while on patrol an officer observed the defendant's automobile weaving in and out of traffic.

The officer stopped the vehicle and as he approached it, he detected the odor of burnt cannabis.

He told the defendant that he intended to search the automobile, and at that point the defendant reached into the automobile, removed a clear, plastic bag containing cannabis, and handed the bag to the officer.

The officer placed the defendant under arrest and searched the automobile, including the trunk, in which he discovered a cardboard box containing cocaine.

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

The Fifth District reversed, holding that once the officer smelt the odor of burnt cannabis coming from the automobile, he had the right to search the entire vehicle, including the trunk.

State v. Jarrett, 13 FLW 2162 (Fla. 5th DCA, Sept. 15, 19788).

An arrest case involving an unassigned tag

Facing drug charges, the defendant filed a motion to suppress.

The evidence on the motion indicated that a police officer followed the defendant's car based on information from a confidential informant.

The officer ran a computer check on the tag attached to the car and found that it was assigned to another vehicle.

Thereafter, he pulled the defendant over and arrested the defendant for the misdemeanor of

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"unassigned"

attaching a tag not assigned.

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

On appeal, the Fourth District reversed, holding that the officer could not properly arrest the defendant.

In the case of a misdemeanor an officer may arrest without a warrant only if the person has committed the offense in the officer's presence.

In this case, the officer did not see the defendant attach the tag to the vehicle so the offense was not committed in his presence, and the officer had no right to arrest the defendant.

Phillips v. State, 13 FLW 2265 (Fla. 4th DCA, October 5, 1988).

Using a witness who has a stake in the defendant's conviction can be an illegal entrapment

The defendants were charged with traffficking in cocaine.

At their trial, they presented an entrapment defense based on the fact that the undercover agent used by the state to arrange the cocaine transaction had been convicted of trafficking in cocaine and had been promised a reduced sentence if he made a certain number of new cases involving a certain amount of cocaine within a certain period of time.

The defendants were convicted as charged, but on appeal, the Fourht District reversed, holding that due process forbids a criminal prosecution based upon the testimony of a vital state witness who has a stake in a criminal conviction.

Hunter v. State, 13 FLW 2186 (Fla. 4th DCA, Sept. 21, 1988).

A DUI-blood test case under the old law

The defendant was charged with driving under the influence and filed a motion to suppress a blood test which had been administered over his objection after an accident in which he was the only person injured.

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

On appeal, the State Supreme Court affirmed, holding that section 316.1933(1), Florida Statutes, (1987), which requires a driver to submit to a blood test where there is a serious injury and where the officer believes that the defendnat is under the influence of an alcoholic beverage, does not apply when the only person injured is the driver.

State v. Perez, 13 FLW 605 (Fla., Oct. 6, 1988).

Since this case arose, the 1988 Florida Legislature has changed the law to allow the taking of blood from the driver under these circumstances.

Tenth Circuit
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