Tenth Circuit

Legal Advisor

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It takes more than just finding a suspect in possession of a stolen car to make a case. Mike Cusick of Felony Intake goes over the details of filing stolen vehicle cases. Also, the price of hitting a pregnant woman has gone up in Florida.

Abstracts from Florida Judicial system decisions dealing with using helicopters to spot crime, cashing stolen checks, license tag light stops in daylight and drug sales and buys within 1,000 feet of schools are highlighted in April Legal Advisor.

Investigative Procedures

By Mike Cusick

Mere possession of a stolen motor vehicle is not a crime

At first glance, you may disagree with the above statement.

The misunderstanding is in thinking that possession of a stolen motor vehicle, in and of itself, is sufficient evidence to convict a defendant of theft.

Often overlooked is another element to the crime of theft -- that we nust prove *that the defendant knew* the vehicle was stolen.

If we cannot prove that the defendant was actually the thief, then we need evidence to show that the vehicle had been stolen.

We look to your reports for this evidence and sometimes we do not find it.

A typical stolen vehicle report reads as follows:

"Investigating Officer (I.O.) observed a suspicious vehicle pull out of a closed business. I.O. followed the vehicle and ran its tag, ZZZOOO in the FCIC/NCIC computer.

The tag came back registered to a 1988 Ford Mustang registered to Mary Victim, which had been reported stolen.

The vehicle, driven by John Defendant, was stopped. Defendant was arrested for grand theft and taken to the Polk County jail."

This type of report is common. It leaves the Intake Attorney with insufficient information to make a charging decision.

We must request that the arresting officer send a supplement with more details about the arrest.

There is a Florida statute which says that the possession of recently stolen property, unless satisfactorily explained, gives rise to *an inference* that the person knew or should have known that the property was stolen (see section 812.022(2), Florida Statutes).

There are two problems with this statute: First, the inference from the statute is that the defendant knew or should have known that the property was stolen.

For a conviction, under the theft statute we must prove that the defendant *actually knew* the property was stolen, not that he *should have known* it was stolen.

Secondly, and more importantly, the statute permits only an inference that the defendant knew the property was stolen.

While the inference is enough to establish probable cause for the defendant's arrest, it does not rise to the level of proof beyond a reasonable doubt that is required to file an Information and to obtain a conviction.

Therefore, we look to your report for the additional evidence to show the defendant's "guilty knowledge".

The most common way of proving guilty knowledge is through statements made by the defendant.

When you stop a vehicle, one of the first things you do is question the defendant about his ownership or possession of the vehicle.

These important initial conversations are often left out of the arresting officer's report.

From the report it appears that the officer walked up to the car, announced the arrest, handcuffed the defendant, and transported him to jail without ever talking to him.

We want to know what the defendant told you during this initial conversation, even if he lied to you.

Whatever he said may help to prove his guilty knowledge.

Another issue often missing from the report is a description of the condition of the ignition system.

Was the ignition punched out? Was the vehicle hot-wired? Did the vehicle start without a key?

A "punched" ignition clearly puts the driver on notice that the vehicle probably was stolen.

If the evidence is there, we want to charge defendants who possess stolen motor vehicles.

We need your help, however, by having you include in your report every piece of evidence which shows the defendant knew the vehicle was stolen.

Charging aggravated battery with a pregnant victim

The Florida legislature has increased the penalty for battery on a pregnant victim from a first degree misdemeanor to a second degree felony.

The statute permits the charge to be filed whenever the battered victim is pregnant and the defendant knew or should have known that she was pregnant.

As with any statute, law enforcement is urged to use discretion when filing the charge.

The obvious purpose of the statute is to make the offense more severe when direct or indirect injury could be caused to the fetus.

Some factors to consider are: the number of blows inflicted, the severity of the blows, where on the victim's body the blows were inflicted, the seriousness of any injury suffered by the victim or the fetus, and any statements by the defendant as to his intent in striking the victim or injuring the baby.

While we do not want to discourage you from charging the more serious felony when warranted by the facts, you do need to specify in your report the facts which justify the felony charge.

This purpose should be kept in mind when deciding whether or not the charge the felony.

FROM THE COURTS

Edited by Chip Thullbery

United States Supreme Court finds Florida helicopter observation OK at 400 feet

The United States Supreme Court has found that Florida officers acted properly in inspecting a defendant's partially covered greenhouse from a height of 400 feet.

The officers were operating a helicopter in a legal manner when they observed the interior of the defendant's structure.

Justice White said that it was significant that the helicopter in this case was not being operated illegall and nothing suggests "that helicopters flying at 400 feet are sufficiently rare in this country to lend substance to the defendant's claim that he reasonably anticipated that his greenhouse would not be subject to observation from that altitude."

There was no indication that the helicopter interfered with the defendant's use of his property.

White stated that "..no intimate details connected with the use of the home or curtailage were observed, and there was no undue noise, no wind, dust, or threat of injury."

This opinion follows California v. Ciraolo, 476 U.S. 207, which upheld naked-eye surveillance of a fenced back yard conducted by police flying a fixed-wing aircraft at 1,000 feet.

In that case, the court ruled that police may observe what can be seen from a public vantage point and officers could, therefore, observe whatever they could see with the naked eye from their plane flying at a legal height.

Helicopters are not bound by the height requirements of fixed-wing aircraft and may be flown lower if operated without hazard to persons

(See "helicopter" next page)

"helicopter"
and property on the ground.

Florida v. Riley, 44 Crl 1061

JH: If binoculars had been used, this observation would have been illegal

Cashing stolen check found to be dealing in stolen property

The First District Court of Appeal has found that a defendant's act of attempting to cash a recently stolen check was sufficient to uphold a conviction for dealing in stolen property.

The Court was careful to distinguish this case from others in which they found that there was no dealing in stolen property when (1) an auto was stolen for the personal use of the thief (Townsley v. State, 443 So. 2d 649); and (2) a stolen engine was placed into the thief's own van (Lancaster v. State, 369 So. 2d 649).

"The ripple effect of a stolen, forged check may go beyond the original transfer, as the bogus instrument is subject to continued circulation," said the court.

Converting the stolen check into money is "no different from any other sale of stolen goods where money is given in payment.

We find no basis for application of the 'personal use' cases here."

Dixon v. State, 14 FLW 233 (Fla. 1st DCA, Jan. 18, 1989).

J.H.: Note that the mere attempt to convert the check to money was sufficient for conviction in the case.

Also remember that uttering a forged instrument is a third degree felony while this dealing in stolen property charge carries second degree felony penalties.

From the defendant's point of view that change could mean ten more years in prison.

Stop for no license plate light good even though it wasn't nighttime

The Fourth District Court of Appeal refused to suppress cocaine found by a trooper after he followed a Florida traffic statute "to the letter".

The officer had seen Lorenzo Andrews driving with his vehicle lights on, but without a license plate light.

The vehicle was stopped *Before* sundown, six minutes before that time which Florida law requires lights.

The defendant argued that since the headlights were not required, the tag light was likewise not required.

The court disagreed: "The appellant overlooks section 316.221(2), Florida Statutes (1987) which provides in part: **Any taillamp or taillamps, together with any separate lamp or lamps for illuminating the registration plate, shall also be wired as to be lighted whenever the headlamps or auxiliary driving lamps are lighted."**

The Court stressed that the language of the statute was clear and unambiguous, "....therefore, the statute must be given its plain and obvious meaning."

Andrews v. State, 14 FLW 726 (Fla. 4th DCA, 1989).

J.H.: Sometimes it is easy to forget to ask that all-important question: "What other statutes deal with what this defendant has done?"

Sit back and consider all the other possibilities.

Sale and Purchase of Controlled Substance Within 1,000 feet of a School Statute held constitutional

The Fourth District Court of Appeal rejected a defendant's numerous objections to a drug law that exposed him to a possible 30 year prison term.

(See "School" next page)

"school"

The Court held that there was no requirement that persons charged with violating the statute actually know that the drug cite is within 1,000 feet of the school.

The defendant had complained that the police had set up a reverse sting operation near the school and that was unfair in that it was entrapment.

The Court rejected his argument saying that the actions of the police in selling and buying cocaine within the 1,000 feet area does not constitute entrapment where police activity had as its end the interruption of criminal acitvity and the actions of the police were reasonably taylored to apprehend those involved in the ongoing criminal activity.

The defendant further complained that he was denied equal protection of the law because the statute had greater impact on drug purchasers and drug sellers who reside in inner city areas rather than in suburbs or rural areas.

The Court did not buy that argument either.

State v. Burch, 14 FLW 382 (4th DCA, 1989).

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LEGAL ADVISOR

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