Tenth Circuit

Legal Advisor

Jerry Hill, State Attorney

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Handling a concealed firearms charge is largely a matter of covering all required elements of the crime in your report. Felony Intake director Mike Cusick goes over these elements in December Legal Advisor.

Investigative Procedures

By Mike Cusick

Concealed firearms in vehicle

In cases where a defendant is charged with carrying a concealed firearm in a vehicle, sometimes some of the elements are not covered in your reports.

When evidence about these elements is missing, we have to request a supplemental report or no bill the case depending on how quickly a filing decision must be made.

We must be able to prove that the gun was concealed.

Florida courts have held that guns on the seat or floorboard of a vehicle are not concealed.

Therefore, it is important for you to state how the gun was concealed.

Just because you could not observe the gun as you approached the car does not mean it was concealed.

We also must prove that the gun was "carried" by the defendant. This involves two items of proof.

First we must establish that the defendant knew that the gun was there.

Obviously any statements made by the defendant about the gun can be used to prove knowledge.

As with any report, your report should document all statements by the defendant .

In deciding whether the defendant knew about the gun, it is important to include information about who the vehicle belonged to and if there were any other persons in the vehicle.

Finally, the gun should be checked for fingerprints.

In order to charge the defendant, the gun must be readily accessible

for immediate use.

The Legislature has established certain things the gun owner can do to make sure that the gun is not accessible.

A firearm is securely encased if it is in a locked or unlocked glove compartment or gun case, a zippered gun case, a box or container with a lid or a snapped holster.

Sometimes a report will mention that a gun was found under a seat in a holster.

The report, however, makes no mention of whether or not the holster was snapped.

Likewise, a report will state that the gun was in a gun case but again the report says nothing about the gun case being zippered.

As part of this "readily accessible" element, we must establish that the gun was within ready reach of the defendant.

It is important to state exactly where the gun was in the car and to also state exactly where the defendant was in the car.

The mere statement that the gun was "under the seat" does not tell us enough to make a decision as to whether the gun was within the reach of the defendant.

In conclusion, you need to remember tht we can only make a filing decision based upon what you have in your report.

The shorter your report, the more likely it is that you have left important information out.

You need to cover all the elements when charging a defendant with carrying a concealed firearm.

FROM THE COURTS

Edited by Chip Thullbery

Your field notes are not discoverable

The Florida Supreme Court has modified its recent amendment to the discovery rule to further define what police reports are discoverable by the defense.

Thus the last sentence of rule 3.220(b)(1)(ii) now says that "the term 'statement' is specifically intended to include all police investigative reports of any kind prepared for or in connection with the case but shall not include the notes from which such reports are compiled."

InRE; Amendment to Florida Rule of Criminal Procedure 3.220(Discovery), 14 FLW 559 (Fla. Nov. 2, 1989).

Refusing to answer questions is not resisting an officer

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

The evidence on the motion showed that at approximately 6 A.M. one morning, the defendant, a black man, was seen near the Ocala Police Station.

Several minutes later, the station received a telephone bomb threat from a person who sounded like a black male.

Officers then saw the defendant walking back towards the police station.

An officer stopped him for questioning, but he said he had no identification and refused to give his name or to answer other questions.

As a result the officer arrested him for resisting an officer without violence and after searching him

(See "resisting" next page)

"resisting"

found cocaine.

The trial court denied the motion to suppress and the defendant entered a no contest plea, reserving his right to appeal.

On appeal, the Fifth District reversed, holding that the refusal of a person who has been detained to answer the questions of a police officer does not amount to resisting an officer without violence, and that thus the arrest and subsequent search were illegal.

Robinson v. State, 14 FLW 2542 (Fla. 5th DCA, Nov. 2, 1989).

A good example of a citizen encounter

The defendant was charged with attempted second degree murder and filed a motion to suppress evidence.

The evidence on the motion showed that an officer on patrol received a police dispatch which described a black male in a red outfit selling drugs at a supermarket.

At the same time as he received the dispatch, the officer saw the defendant who was a black male wearing a red jogging outfit sitting on the sidewalk by the supermarket.

The officer approached the defendant and explained to him that someone matching his description was selling drugs.

The officer then asked the defendant if he would mind emptying his pockets.

The defendant denied having any drugs but then opened his shirt revealing a gun.

Upon seeing the firearm, the officer arrested the defendant and seized the gun.

(See "encounter" next page)

"encounter"

Based on this evidence, the trial court suppressed the gun on the basis that the description in the broadcast was too vague to support a well-founded suspicion necessary for an investigatory stop.

On appeal, the Second District reversed, holding that the officer's actions prior to seeing the gun did not amount to an investigatory stop but were only a citizen enconter.

State v. Simons, 14 FLW 2392 (Fla. 2d DCA Oct. 4, 1989).

Details of officer's experience justify a stop

The defendant was charged with grand theft of a motor vehicle and filed a motion to suppress.

The evidence on the motion showed that an officer while on routine patrol in an area known for drug trafficking and a high presence of stolen vehicles saw the defendant driving a vehicle which had the trunk keyhole prised open.

Based upon these facts and his experience, the officer pulled the defendant over where further investigation led to the officer finding that the defendant had stolen the vehicle.

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

On appeal, the Third Distrcit affirmed, holding that the officer had a founded suspicion of criminal activity which justified the stop of the defendant.

Harrison v. State, 14 FLW 2451 (Fla. 3rd DCA Oct. 17, 1989).

The open view doctrine

In two very similar cases, the defendants were charged with possession of drugs and filed motions to suppress.

The evidence in both cases showed that an officer saw a car parked in the parking lot of a bar in the early morning hours.

The officer also saw the occupants making motions in the car as if they were using drugs.

In both instances, the officer then approached the car, shined his flashlight into it, saw what he believed to be cocaine, and arrested the defendant.

In each case the trial courts granted the motion to suppress, but on appeal, the Second District reversed, holding that the officer had the right to be where he was and he saw cocaine which provided him probable cause to arrest.

State v. Starke, 14 FLW 2513 (Fla. 2d DCA Oct. 25, 1989); State v. Ecker, 14 FLW 2514 (Fla. 2d DCA Oct. 25, 1989).

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