Tenth Circuit

Legal Advisor

Jerry Hill, State Attorney

Vol. 4, No. 1 January 1990

More on stolen auto report elements in January Legal Advisor from Felony Intake director Mike Cusick.

Also, condensations of what Florida's court system has been up to, in the From The Courts section.

Investigative Procedures

By Mike Cusick

Motor vehicle thefts

We have a continuing problem with many of the reports which are being sent in on stolen motor vehicle cases.

I am requesting that supervisors who approve the reports pay particular attention to this problem.

When a suspect is stopped driving a stolen motor vehicle, the officer must be able to prove that the defendant knew that the vehicle was stolen.

While this problem has been covered in a previous issue, there has been no noticeable improvement in the quality of the reports.

Amny time a motor vehicle is stopped, there is going to be some initial questioning of the driver as to ownership of and documentation for the vehicle.

Routinely, this conversation is not covered in the offense report.

Yet, it is very important in considering whether or not to charge the defendant.

The investigating officer should allow the driver to tell as much as possible about what he knows concerning the vehicle.

Another routine omission is as to the condition of the vehcile's ignition.

Usually no mention is made of the ignition or whether there are keys in it.

A "punched" ignition clearly puts the driver on notice that the vehcile is stolen.

We cannot use this evidence against the defendant if you have not put the information in the report.

Again, supervisors should be looking for such omissions.

Omissions like the ones we have discussed here would occur less frequently if you use the Felony Law Manual.

A copy has been supplied to each officer in each department.

You should use the manual as a checklist to make sure that you have included in your report all of the evidence as to each element of the crime you are charging.

If you do not have a copy of the Manual, you can contact the SAO Felony Intake Division to receive a copy.

A copy is supplied to each officer going through the Basic Standards course at Polk Community College.

FROM THE COURTS

Edited by Chip Thullbery

Supreme Court disapproves random encounters with bus passengers

The defendant was charged with drug related offenses and filed a motion to suppress.

The evidence on the motion showed that two Broward County sheriff's officers boarded a bus bound from Miami to Atlanta during a stop in Fort Lauderdale.

They picked out one of the passengers and after checking his identification asked for consent to search his luggage.

The passenger who was the defendant consented and the search revealed illegal drugs.

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

On appeal, the Supreme Court reversed, holding that the officers'

(See "random" next page)

"random"
approach to random passengers on the bus was not a citizen encounter but rather a detention for which they had no articulable reason.

Thus, consent was tainted, and the search was illegal.

Bostic v. State, 14 FLW 586 (Fla. Nov. 30, 1989).

Search incident to arrest must take place at time of arrest

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

The evidence on the motion showed that officers boarded a bus and asked the defendant if they could search his luggage.

Before he could reply, an officer searching another bag which no one claimed said he had found cocaine.

The defendant then punched the officer talking to him and ran from the bus.

Other officers followed him and arrested him several blocks away.

In the meantime, the officers left at the bus removed the defendant's luggage.

The defendant then punched the officer talking to him and ran from the bus.

Other officers followed him and arrested him several blocks away.

In the meantime, the officers left at the bus removed the defendnat's luggage.

It was searched some time later, and cocaine was found.

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

On appeal, the Fourth District affirmed, holding that because the luggage came into police possession prior to the arrest and was searched without him being

(See "search" next page)

"search"

present, the search could not be justified as a search incident to arrest.

State v. Brooks, 14 FLW 2744 (Fla. 4th DCA Nov. 29, 1989).

Defendant's actions justified stop

The defendant was charged with possession of coccaine and filed a motion to supress.

The evidence showed that at approximately 2:30 A.M. one morning officers noticed a pickup truck parked by the side of the road in a predominantly black neighborhood of Lakeland known for high levels of crime and drug abuse.

The driver of the truck was a white male.

Approximately 10 to 15 minutes later, the officers observed the truck parked in a different location with the white male talking to three known drug dealers.

Shortly thereafter, the officers again spotted the truck at a different location with a group of men around it. As the officers approached, the group fled.

The officers' suspicions were aroused and they followed the truck which drove through a stop sign at approximately five miles per hour without stopping.

The officers pulled the truck over and after the driver was ordered to exit the vehicle an officer using a flashlight saw a clear plastic bag containing a white substance in plain view between the driver's seat and the console.

The defendant was arrested and the saubstance was identified as cocaine.

The trial court granted the motion to suppress, but on appeal

(See "justified" next page)

"justified"
the Second District reversed, holding that the stop of the defendant was justified either on the basis of a founded suspicion of criminal activity or as part of a legitimate traffic stop.

State v. Renda, 14 FLW 2835 (Fla. 2d DCA Dec. 8, 1989).

Case charged as robbery really only a theft

The defendant was charged with robbery and filed a motion to dismiss.

The facts upon which the motion was based were that the defendant hid merchandise on her person and left a store without paying for it.

She was stopped outside and escorted back inside by two store employees.

Once inside, she removed the merchandise and threw it on the floor.

She was then instructed to accompany the employees to the store security office.

However, she began to resist and struggle.

The trial court denied the motion to dismiss, and she pled no contest reserving her right to appeal.

On appeal, the Fifth District reversed, holding that the defendant was not guilty of robbery because she had abandoned the property she had taken prior to using force.

Simmons v. State, 14 FLW 2609 (Fla. 5th DCA Nov. 9, 1989).

Burglar who arms himself in flight guilty of armed burglary

The defendant was charged with the armed burglary of a mini wharehouse.

(See "Burglar" next page)

"Burglar"

At his trial, an officer testified he saw the defendant run from the wharehouse, enter his truck, and drive off.

The officer followed and stopped the truck, ordering the defendant to get out.

the defendant did so and was placed under arrest.

The office found a rifle in the passenger compartment situated next to the driver's leg with the barrel pointed downward.

The defendant was convicted as charged and received a three year mandatory minimum sentence.

On appeal he argued that he was not guilty of armed burglary or subject to a mandatory sentence minimum because he did not have the firearm with him at the time he was in the wharehouse.

The First District rejected this argument and affirmed, holding that because the defendant was armed with the rifle while in flight from the burglary, he was guilty of armed burglary and subject to a three year mandatory minimum sentence.

Fipps v. State, 14 FLW 2823 (Fla. 1st DCA Dec. 11, 1989).

Accident privilage invalidates statements

The defendant was charged with DUI manslaughter.

Evidence at his trial chowed that he made statements to an officer while being transported in a police car to the hospital for blood and urine tests after being placed under arrest, and to another officer while at the hospital after being informed of his Miranda rights.

The trial court admitted the statements over his objection and he was convicted as charged.

On appeal, the Fourth District reversed, holding that the statements were inadmissible

(See "invalidates" next page)

"invalidates" under section 316.0666(4), Florida Statutes (1987), because the police never advised him of the distinction between the accident and criminal phases of the investigation.

West v. State, 14 FLW 2701 (Fla. 4th DCA, Nov. 22, 1989).

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 33831-9000
(941) 534-4800