Tenth Circuit

Legal Advisor

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April 1992

Law enforcement officers are finding that taping statements of juveniles can be a touchy issue. Proper and effective handling of taped statements is outlined in this month's Legal Advisor.

Florida's Supreme and District Courts have handed down several significant decisions, detailed in the From The Courts section.

Investigative Procedures

By Mike Cusick

Taping the statements of juveniles

There is some confusion among officers as to when juvenile interviews can be taped.

. The general rule is that taped statements should be taken of juveniles.

This general rules applies to victims, witnesses and defendants.

Therefore, under most circumstances a juvenile's statements should be taped.

The major exceptions to this rule involve cases where the juvenile is the victim of sexual or physical abuse and the case is going to be handled by our Child Sex Abuse Unit or where the juvenile is a witness on a First Degree Murder case.

If either exception applies, then a taped statement should not be taken unless the specifically assigned attorney has requested one.

It is important to repeat that if possible, a taped statement should be taken from juvenile defendants.

Obviously, there will be situations where a juvenile defendant refuses to give a taped statement.

Other than those circumstances, however, the juvenile defendant's statement should be taped.

As with adult defendants, the investigator should bring out, in the defendant's own words, as many details as possible about the defendant's involvement in the crime.

If the defendant denies actually going into a structure on a burglary case, then center in on the defendant's involvement in removing the stolen property, or acting as a lookout.

Too many investigators believe that if the defendant was at the scene of a crime he can be charged with the crime.

That is not correct! We must be able to prove that (1) the defendant knew that the crime was going to occur, (2) that he intended to participate actively or to share in an expected benefit and (3) that he actually did something by which he intended to help commit the crime.

We are constantly reminding investigators that the defendant's mere presence at the crime scene is insufficient proof that he committed the crime.

This is why it is so important that you thoroughly question a defendant when he's willing to talk.

FROM THE COURTS

Edited by Chip Thullbery

Forging stolen checks is not dealing in stolen property

The defendant was charged with thirty-six counts of forgery, thirty six counts of uttering a forgery, and forty two counts of dealing in stolen property.

She filed a motion to dismiss the dealing in stolen property counts.

The facts on which the motion was based were that she obtained company checks from her employer and either forged her employer's signature or used blank checks pre-signed by him to satisfy her personal credit card debt.

The trial court granted the motion to dismiss and on appeal, the Supreme Court affirmed, holding that negotiating stolen checks for personal use does not constitute dealing in stolen property.

State v. Camp, 17 FLW S230 (Fla. Apr. 9, 1992).

A lewd act constitutes one crime no matter how many children witness it

The defendant was charged with, among other things, two counts of lewd acts in the presence of a child.

The evidence at his trial indicated that he exposed himself in front of two girls, and the jury convicted him as charged.

On appeal, the Supreme Court reversed one of the convictions, holding that the number of distinct lewd acts rather than the number of children witnessing the acts is determinative of the number of counts which may be charged.

State v. Hernandez, 17 FLW S223 (Fla. Apr. 2, 1992).

Police activity entrapped defendant

The defendant was charged with trafficking in cocaine and filed a motion to dismiss on the grounds of due process violations and entrapment.

The evidence on the motion showed that the defendant, a 30-year-old car salesman who had never been arrested, encountered a confidential informant at a nightclub one evening.

The informant paid for the entrance fee and for several drinks.

During the course of the evening, he stated that he was involved in drug dealing.

He said there was a lot of money to be made in the business and offered the defendant cocaine.

The defendant refused.

The informant then told the defendant that if the defendant could introduce the informant to a purchaser of a kilo or more of cocaine the defendant would make one thousand or two thousand

(See "entrapped" next page)

"entrapped"

dollars.

Again the defendant declined.

Over the next several days the informant continued to call the defendant, but the defendant refused to become involved in his dealings.

However, the defendant mentioned the informant to a co-worker of his who prevailed upon the defendant to introduce him to the informant.

A meeting was set up at which the co-worker bought the cocaine from the informant.

The co-worker and the defendant were then arrested.

The evidence also showed that the informant had previously been arrested and convicted for trafficking in cocaine.

He had entered into a substantial assistance agreement with the state and was placed on probation.

At the time of the defendant's arrest, he had fulfilled his substantial assistance agreement. However, he was working as an informant for pay which was contingent not on his testimony or participation in a trial but upon the amount of property seized in an arrest.

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

On appeal, the Third District reversed, holding that although the informant's contingency fee arrangement did not violate the defendant's due process rights, the defendant was objectively entrapped because the police activity in question did not have as its end the interruption of a specific ongoing criminal activity.

Lewis v. State, 17 FLW D793 (Fla. 3d DCA Mar. 24, 1992).

Another example of entrapment

The defendant was charged with purchase of cocaine within 1,000 feet of a school.

At his trial, the evidence showed that a female narcotics detective met him in a bar while she was off-duty.

He struck up a conversation with her, offered to buy her a beer, and told her he was looking for some partying.

The officer testified that she thought the word partying included doing drugs, so she asked the defendant if he used cocaine.

He said he did and asked if she could get him some. After further conversation he placed an order with her which she delivered the next day at his place of work which was within 1,000 feet of a school.

At the end of the State's case, the defendant moved for a judgment of acquittal because he argued the police had entrapped him as a matter of law. The trial court denied the motion, and he was convicted as charged.

On appeal, the Fourth District reversed, holding that the defendant was entrapped as a matter of law because the State failed to establish that the officer's activities had as their end the interruption of specific ongoing criminal activity since she first interjected drug talk into her conversations with the defendant.

Futch v. State, 17 FLW D802 (Fla. 4th DCA Mar. 25, 1992).

Defendant's Miranda Rights violated by contact

The defendant was charged with first degree murder and filed a motion to suppress his confessions.

The evidence on the motion showed that he was arrested for

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"Miranda"

unrelated to the murder on March 11, 1988. He was given Miranda warnings and voluntarily confessed to committing several armed robberies.

He was interviewed again on March 18, 1988 about another robbery. In response he stated he did not want to talk until his lawyer was present.

On March 23, 1988 an officer from a different law enforcement agency held a third interview with the defendant.

The Miranda warnings were repeated and the defendant was shown the waiver form he had previously signed on March 11. At this time he confessed his participation in the murder.

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

On appeal, the Second District held that the trial court erred in denying the motion to suppress because the officer violated the defendant's Fifth Amendment rights by initiating contact with him on March 23 after he indicated on March 18 that he did not want to speak without his attorney present.

However, the court found that the introduction of the confession into evidence was harmless error in this case and affirmed.

Segarrav v. State, 17 FLW D819 (Fla. 2d DCA March 27, 1992).

Juvenile escape statute is unconstitutional

The defendant, a juvenile, was charged with being delinquent for committing the crime of juvenile escape in violation of section 39.061, Florida Statutes.

After a hearing, he was found to be delinquent, but on appeal the First District reversed, holding that section 39.061 is unconstitutional

(See "juvenile" next page)

"juvenile" because it delegates to HRS the authority to determine those institutions from which it is a crime for a juvenile to escape.

In the Interest of DP, 17 FLW D830 (Fla. 1st DCA Mar. 27, 1992).

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