

Tenth Circuit

# Legal Advisor

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*Turning down the volume in noise complaint cases can be a problem for law enforcement officers.*

*State Attorney's Office misdemeanor division director Gary Allen spells out a four-step procedure for ensuring that noise complaint cases make it into the system, with a good chance for successful prosecution, in August Legal Advisor.*

# Investigative Procedures

By Gary L. Allen

## Bringing noise down to a reasonable level

We have been contacted from time to time about how law enforcement agencies can deal with cases involving individuals and businesses creating disturbances with loud noises.

Since there is no specific statute on the point, our view continues to be that these cases would best be handled with city or county ordinances regulating noise.

However, until we get these ordinances we believe the disorderly conduct statute, 877.03 can be used.

The key to successful prosecution of this nature is to have more than one complaining witness on the charge.

These witnesses should be from different households to show the degree of disturbance caused by the defendant. Of course officers can list additional witnesses at each household to further bolster

the case.

Also, I suggest that the reporting officer should become a witness in the case by taking note of the areas around the offending location where he could hear the noise. This would show that the violation is more than a localized problem.

Further, the reporting officer should make contact at the offending location with the owner or person in charge. This is absolutely necessary so we can I.D. a specific defendant.

For example, the manager may be in charge and the owner not present.

The officer should warn the person in charge and give a reasonable period of time to comply.

This will prevent the defendant from contending that he had no

knowledge of the violation.

If the noise still persists, then prepare a complaint affidavit and send it to us for review. If everything is in order, we will get the case into the system as soon as possible.

This appears to be a minimum to qualify for prosecution under the statute (877.03). I realize we have talked about noise meters in the past, but obtaining these instruments can be difficult. Therefore, let's attempt to handle these cases on the basis we've set out above.

To summarize: 1. Upon receiving a noise complaint, the officer contacts the victim, determines if the complaint is founded and makes contact with any other affected households.

2. The officer checks the areas and determines how large an area is affected.

3. The officer goes to the offending location and talks to the person who is found to be in

charge of or causing the noise. Tell them of the complaint, and to cease the disturbance.

4. If the noise continues at disturbance levels, prepare a complaint affidavit and submit it to our office.

Hopefully, this will provide a workable method for dealing with these continuing problems. If you have any questions, please do not hesitate to contact me.

Thank you for your consideration.

## FROM THE COURTS

Edited by Chip Thullbery

### **Court rules that two takings are one robbery**

The defendant was charged with two counts of armed robbery.

At his trial, the evidence showed that after entering a convenience store, he took money from the cash register by force. He then beat the store clerk and took his wallet.

The defendant was convicted as charged but on appeal, the Third

District reversed one of the robbery convictions, holding that the taking of the money from the cash register and the victim's wallet were all part of one continuous transaction and so would not support two convictions for robbery.

Nordelo v. State, 17 FLW D1746 (Fla. 3rd DCA July 21, 1992).

### **Forceable taking of car both robbery and theft**

The defendant was charged with, among other things, grand theft auto and robbery with a weapon.

The evidence at his trial showed that he gained entrance to the victim's automobile by threatening her with a knife and then directed her to drive to different locations. Later he drove.

After threatening her with death and committing several acts of sexual battery upon her, he finally returned the keys to the vehicle and abandoned both her and the vehicle.

He was convicted as charged.

On appeal, the Fifth District affirmed, holding that a person can (See "forceable" next page)

**"forceable"**

be convicted of both robbery and grand theft auto for the forceful taking of an auto from another.

Sirmons v. State, 17 FLW D1826  
(Fla. 5th DCA July 31, 1992).

**Not every stop justifies a frisk**

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

The evidence on the motion showed that officers on patrol in a public housing area known for narcotics activity saw the defendant enter a vacant abandoned apartment.

When he came out the officers patted him down finding the cocaine and marijuana.

One officer testified that he had no reason to believe the defendant

was armed with weapons other than the fact that it was a high narcotics area and that a lot of people were known to carry weapons.

The trial court denied the motion to suppress but on appeal, the Second District reversed, holding that the patdown of the defendant was illegal because the officer did not have probable cause to believe that the defendant was armed with a dangerous weapon.

Beasley v. State, 17 FLW D1908  
(Fla. 2nd DCA Aug. 12, 1992).

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"Laws cannot truly be made. They are discovered by means of the collective conscience of its representatives, and of ancient documents. The promulgation of regulations which violate tradition and the sense of justice can have no legal validity: the ancient laws survive in spite of these evil ways and innovations, and demand their abolition." Phillippe Wolff