Tenth Circuit

Legal Advisor

Jerry Hill, State Attorney

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As the year comes to an end, I want to once again take the opportunity to thank each of you for the service you render every day to the people of Hardee, Highlands and Polk Counties. May you and your families enjoy a prosperous New Year!

Investigative Procedures

By Rusty Franklin

The use of civil infraction citations in DUI cases

Recently, our office has been confronted by a legal issue arising out of Driving Under the Influence cases.

Customarily, in detecting the impaired driver, a law enforcement officer will observe the driver commit a so-called "civil infraction" offense in the officer's presence. Civil infractions are all non-criminal traffic offenses where the defendant is not required to make a mandatory court appearance.

Examples of civil infraction offenses are speeding, failure to yield the right of way, running a stop sign, failure to maintain a single lane, etc..

Examples of offenses that are not civil infractions, but are criminal traffic offenses which require the defendant to make a mandatory court appearance are driving under the influence, driving while license suspended or revoked, reckless driving, refusal to sign a citation, attaching unassigned tag, expired tag greater than four months, etc..

Most officers, after making a DUI arrest, will charge the defendant with all the various civil infractions the defendant committed in the officer's presence.

For example, if the basis for the defendant's traffic stop was that the defendant was weaving his automobile, the officer will write citations for failure to maintain a single lane and DUI.

A disturbing development has occurred in various county courts around the state.

In instances similar to those noted above, where an officer charges a defendant with DUI and a civil infraction, upon advice of defense attorneys, defendants will admit they committed the civil

l infraction and enter a plea of not guilty on the criminal traffic offenses.

At some point later on, the defendant will ask the court to dismiss the DUI charge on the grounds that by pleading guilty to the civil infraction, further prosecution would violate the constitutional protections against double jeopardy.

Judges in Pinellas County and Clay County have agreed with defense attorneys on these arguments. As a matter of fact, in Dade County, the State Attorney's Office has literally dismissed thousands of civil infraction traffic tickets that arise out of the same transaction as a DUI arrest.

Accordingly, until this issue is resolved with some degree of finality in our county courts or in the Florida Second District Court of Appeal, our office requests each law enforcement agency within this county to adhere to the following policy.

When a defendant commits both civil and criminal traffic infractions, our office requests that law enforcement agencies in this county only write citations for the criminal traffic offenses.

This will prevent the defendant from having the ability to raise the double jeopardy issues noted above.

Our office will promptly notify each agency when it would be acceptable in the future to write both civil infractions and criminal traffic offenses arising out of the same incident.

Because of the number of counties that have dealt with this issue, I do not believe it will be very long before this issue is resolved with some degree of finality.

If any of you have any questions about this policy, please contact either Chip Thullbery, Administrative Assistant State Attorney, or myself.

FROM THE COURTS

Edited by Chip Thullbery

Habitual violent felony offender statute is constitutional

The defendant was charged with sale of cocaine.

The State filed a motion of intent to classify him as a habitual violent felony offender and after he was convicted as charged, the court declared him a habitual violent felony offender based on a prior armed robbery conviction and sentenced him to 25 years in prison with a mandatory term of 15 years.

On appeal, he argued that the habitual violent felony offender statute was unconstitutional because it violated his substantive due process rights and his protection against double jeopardy.

The Supreme Court rejected this argument and affirmed.

Tillman v. State 17 FLW S707 (Fla. Nov. 19, 1992).

Police wrongly tape-recorded conversations of defendant who requested lawyer

The defendant was charged with trafficking and conspiracy to traffic in dilaudid and filed a motion to suppress statements he made during a tape recorded telephone conversation.

The evidence on the motion showed that after being arrested, he requested and the court appointed a public defender at first appearance hearing. Subsequently, he was released on bail.

After his release, a codefendant who could not make bail advised the police he would help in obtaining incriminating evidence from the defendant.

The police asked the codefendant

(See "recorded" next page)

"recorded"

if they could listen in and record his telephone conversations.

The codefendant agreed and the police taped two telephone conversations.

The trial court denied the motion to suppress the tapes of the telephone conversations and the defendant was convicted as charged.

On appeal the Supreme Court held that the trial court erred in denying the motion to suppress because the taping of the telephone conversations violated the defendant's right to counsel which had attached at the time he requested counsel at first appearance hearing.

However, the Supreme Court affirmed the conviction because the introduction of the conversations was harmless error.

Peoples v. State, 17 FLW S713 (Fla. Nov. 25, 1992).

Evidence was insufficient to show scale was drug paraphernalia

The defendant was charged with possession of cocaine with intent to sell, possession of marijuana, and possession of drug paraphernalia.

At his trial, the evidence showed that law enforcement officers executed a search warrant at his residence.

There they found cocaine and marijuana. They also found a triple beam scale on a night stand in the master bedroom.

The deputy who found it testified that in his opinion the purpose of such a scales in a private residence was to weigh out cocaine.

The defendant was convicted as charged, but on appeal, the Fifth District reversed the drug paraphernalia conviction, holding

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"evidence"

that the evidence was insufficient to show that the scale was used in connection with drugs.

Frazier v. State, 17 FLW D2548 (Fla. 5th DCA Nov. 13, 1992).

Use of purse as pillow gave defendant knowing possession of cocaine found in it

The defendant was charged with trafficking in cocaine. At her trial, the evidence showed she was a passenger in a vehicle stopped for a traffic violation.

When the officer approached the car he saw her sleeping in the back seat, using her handbag as a pillow.

Subsequently, he searched the handbag found in excess of 28 grams of cocaine.

The defendant was convicted as charged, and on appeal, the Fifth District affirmed, holding that the evidence was sufficient to establish that the defendant had knowing possession of the cocaine.

Gartrell v. State, 17 FLW D2623 (Fla. 5th DCA Nov. 25, 1992).

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