Tenth Circuit

Legal Advisor

Jerry Hill, State Attorney

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Officers are under an obligation to ensure that the exact legal procedure is followed when notarizing reports. This procedure is spelled out in February Advisor.

Also, the courts have been especially busy of late, putting out decisions that have an impact on the way we do business.

Investigative Procedures

By Mike Cusick

Make sure to properly notarize your reports and affidavits

Section 117.10 of the Florida Statutes authorizes law enforcement officers to act as notaries when engaged in the performance of their legal duties. It is important for officers to remember that they must follow the same procedure as the notary in notarizing a document.

The officer should only notarize a document if:

1. The witness or other law enforcement officer is present before the notarizing officer.

2. The witness or other officer is placed under oath by the notarizing officer.

3. The witness or other officer signs the document in the presence of the notarizing officer.

4. The notarizing officer notarizes the document in the presence of the witness or other officer.

These steps are the proper procedure for law enforcement officers notarizing reports or affidavits. It is important to follow all of the steps.

Section 117.10 of the Florida Statutes makes it a third degree felony to falsely or fraudulently make a certificate as a notary pulbic or to falsely take or receive an acknowledgement of the signature on a written document.

FROM THE COURTS

Edited by Chip Thullbery

Employees may carry guns

The defendant was charged with carrying a concealed firearm and filed a motion to dismiss for failure to state a prima facie case.

The facts on which the motion was based were that the defendant was inside a supermarket where he was employed as a grocer when the police observed a bulge on him.

They searched him and found a concealed firearm.

The trial court granted the motion to dismiss, and on appeal, the Third District affirmed, holding that the exception to the carrying a concealed firearm statute which exempts a person possessing arms at his place of business applies to employees of the business as well as its owners.

State v. Commons, 17 FLW D144 (Fla. 3rd DCA Dec. 31, 1991).

Police may not make crack

The defendant was charged with purchasing cocaine within 1,000 feet of a school and filed a motion to dismiss, asserting that his constitutional right to due process of law had been violated because he had been caught in a reverse sting operation in which the police used crack cocaine which they had manufactured.

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

On appeal, the Fourth District reversed, holding that while the use of a reverse sting operation does not in itself cause the defendant's

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"crack"
constitutional rights to be violated even if the reverse sting is specifically set up within 1,000 feet of a school, the police manufacture or reconstitution of powdered cocaine into crack cocaine rocks is an illegal action which infringes on a defendant's right to due process of law.

Kelly v. State, 17 FLW D154 (Fla. 4th DCA Jan, 3, 1992).

A guy is not always responsible for his friends' actions

The defendant, a juvenile, was charged with being delinquent for committing an armed robbery.

At his hearing the evidence showed that he was standing in a group of ten boys.

The victim, who was a schoolmate of the defendant, walked by the group.

The defendant struck the victim in the face and then the other boys joined in repeatedly hitting and kicking him.

When the victim was on the ground one of the boys took his jewelry. The victim was unable to ascertain which of the boys did this.

The defendant was convicted as charged, but on appeal, the Third District reversed, holding that there was insufficient evidence to establish that the defendant intended for the victim's jewelry to be taken when he attacked him.

S.G. v. State, 16 FLW D3038 (Fla. 3rd DCA Dec. 10, 1991).

Manslaughter only occurs when death is foreseeable

The defendant was charged with manslaughter and filed a motion to dismiss, asserting that the State

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"foreseeable"

could not establish a prima facie case

The facts on which the motion was based were that the defendant entered a church and stole $110.00 from a collection plate.

One of the members of the congregation who witnessed the theft chased the defendant.

During the pursuit, the congregation member died of a heart attack.

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

On appeal, the Fifth District reversed, holding that the defendant was not guilty of manslaughter because the death was not a foreseeable result of the theft.

Todd v. State, 17 FLW D369 (Fla. 5th DCA Jan. 31, 1992).

Stealth can happen in the daytime

The defendant was charged with attempted burglary.

At his trial, the evidence showed that he broke the victim's van window in a parking lot while the victim was nowhere in the vicinity.

In arguing the case, the State relied upon section 810.07 Florida Statutes, which provides that proof of the attempt to enter a conveyance stealthily is prima facie evidence of an intent to commit an offense.

The defendant was convicted of attempted burglary and appealed, arguing that in breaking into the van in broad daylight in a parking lot he did not act stealthily.

The Third District rejected this argument and affirmed.

Irvin v. State, 16 FLW D2945 (Fla. 3rd DCA Nov. 26, 1991).

For robbery, theft and violence must go together

The defendant was charged with burglary, sexual battery, and robbery.

The evidence at his trial showed that on the night of the attack he entered the victim's home and committed a sexual battery upon her.

After he left, she found that money and jewelry were missing.

The defendant was convicted as charged, but on appeal, the Fourth District reversed the robbery conviction, holding that since the defendant's use of force against the victim occurred during the sexual battery and not during the taking of the money and jewelry, the defendant was not guilty of robbery.

Harris v. State, 16 FLW D2906 (Fla. 4th DCA Nov. 20, 1991).

Right to a lawyer is crime specific

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

The evidence on the motion showed that the defendant was arrested on burglary charges and outstanding warrants which were unrelated to the murder case.

The following day he attended first appearance where he requested and received counsel on those charges.

Several weeks later the police initiated questioning concerning the murder, and at the time the defendant confessed.

Thereafter he was charged with the crime.

On appeal, the Supreme Court affirmed, holding that the police did not violate the defendant's sixth amendment right to counsel when they initiated contact with him to

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"lawyer"
discuss the murder because he had not yet been charged with that murder.

Owen v. State 17 FLW S71 (Fla. Jan. 23, 1992).

Defendant's actions gave officers reasonable suspicion

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

The evidence showed that shortly after midnight, officers conducting an undercover surveillance observed a man engage in several hand transactions with others.

The man conducted a transaction with the defendant who then walked to the front porch of his house.

An officer drove by the house in a marked unit and when the defendant saw the unit he threw an object into a nearby planter.

After the cruiser passed he removed something from the planter and put it in his shoe.

An officer then detained the defendant and placed him in a patrol car while he ran a warrants check on him.

There were no outstanding warrants, and the defendant was released.

When the defendant got out of the car an officer checked the back seat and found a cocaine pipe.

The officers then searched the defendant and found marijuana and a one dollar bill containing powdered cocaine in his shoe.

The trial court denied the motion to suppress, but on appeal, the Second District reversed, ruling that the officers lacked a founded suspicion of criminal activity

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"suspicion"

necessary to detain the defendant.

The State then sought review in the Supreme Court which quashed the Second District's opinion, holding that under the totality of the circumstances the officers had a founded suspicion that the defendant had engaged in a narcotics transaction.

State v. Anderson, 17 FLW (Fla. Jan 2, 1992).

By itself, anonymous tip cannot provide probable cause

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

The evidence showed that a police officer received a telephone call from an anonymous caller which stated that an individual whose clothing he described was selling cocaine in a particular bar in a high crime area known for narcotics activity.

The officer went to the bar where he found the defendant dressed as described.

The officer approached the defendant and conducted a patdown search during which he discovered cocaine in the defendant's pocket.

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

On appeal, the Second District reversed, holding that an anonymous tip may not provide probable cause to arrest absent independent evidence of criminal activity on the part of the suspect. Cunningham v. State, 17 FLW D99 (Fla. 2nd DCA Dec. 27, 1991).

Keeping bad company does not give police a right to frisk

The defendant was charged with carrying a concealed firearm and possession of a firearm by a convicted felon and filed a motion to suppress.

The evidence on the motion showed that the defendant was standing with two other men.

The police officers approached the group because one of the other men was a suspect in a robbery investigation.

Neither the defendant or the third member of the group were involved in that investigation.

The officers detained all three, ordering them to place their hands on an automobile.

A frisk turned up the firearm on the defendant's person.

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

On appeal, the Third District reversed, holding that the defendant's mere presence at the scene of the investigatory stop of his companion did not justify a stop and frisk of him.

Louis v. State 16 FLW D2914 (Fla. 3rd DCA Nov. 15, 1991).

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Defendants' action provided probable cause to arrest

The defendant was charged with possession of cocaine and resisting arrest without violence and filed a motion to suppress.

The evidence on the motion showed that the defendant was observed by officers experienced in narcotic arrests in an area known for narcotics trafficking at about 4:00 A.M. one morning. He was in the company of another individual who was seen looking and pointing his index finger into the defendant's outstretched palm.

The man appeared to the officers to be sifting through the contents in the defendant's hand attempting to make a selection. Upon seeing this the officers stopped the defendant and subsequently discovered cocaine.

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

On appeal, the Third District affirmed, holding that in the light of the officers' experience, they could reasonably believe that an illegal drug sale was taking place.

Borgis v. State, 16 FLW D2950 (Fla. 3rd DCA Nov. 26, 1991).