

Tenth Circuit

Legal Advisor

Jerry Hill, State Attorney



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The right a victim doesn't have, and the responsibilities of law enforcement officers when threatened by detainees. Two troubling issues arising from complaint and arrest incidents are covered in January Advisor.

Investigative Procedures

By Mike Cusick

Does a victim have a right to sign a complaint affidavit

In order to charge a person with a criminal offense, a law enforcement officer must have proof that a crime was committed and probable cause to believe that the suspect is the person who committed the crime.

It is the duty of the officer to investigate the case and determine whether the proof requirements have been met.

The filing of an arrest or complaint affidavit by an officer is a representation that the officer has investigated the case and is satisfied that the case is provable.

If an officer is not satisfied that the proof requirements have been met but permits a citizen to sign an affidavit and sends it to the State Attorney's Office, the officer is misrepresenting evidence in the case to our office and is derelict in

his duty.

The citizen does not have the knowledge, objectivity, and training to make a decision as to what, if any, charges may be filed -- there is no statutory right to have someone charged with a crime.

It is the policy of this office that a victim does not have the right to sign an affidavit.

It is the duty of the investigating officer to make a decision to file charges or not. The responsibility cannot be given or delegated to the victim.

Our attorneys are always available to assist law enforcement with the difficult cases.

However, the final decision should be made by the officer after an evaluation of the evidence.

Problems with F.S. 838.021, Threat Against Public Servant

We end up by no-billing the charge of Corruption by Threat Against a Public Servant in most cases where it is charged.

This results from misunderstanding by law enforcement as to what are the essential elements of the offense.

In the typical case, the defendant, often drunk, makes threats against an officer or the officer's family after the officer has arrested the defendant for a crime.

The defendant states that when he gets out of jail, he is going to injure the officer or the officer's family members.

With these circumstances in mind, we must look to see if there is a violation of the statute.

Clearly, the first element of the offense is satisfied -- the defendant has threatened harm to a public servant or his immediate family.

The second element, however, is missing. The threat must be made with the intent to influence the performance of an act, or omission, by the public servant.

Under the given facts, the defendant's threats are not made in order to influence future acts of the officer.

Rather, the threats are made because of the officer's past act, which was arresting the suspect for a crime.

Threats made for prior acts by the officer are not punishable under this statute.

Circumstances gave officer right to frisk suspect

The defendant, a juvenile, was charged with being delinquent for possession of cocaine and filed a motion to suppress.

The evidence on the motion showed that the defendant was observed by officers at 1:00 A.M. lying half in and half out of the rear passenger side of a vehicle in an otherwise vacant parking lot.

The parking lot was located in an area where police had recovered numerous stolen vehicles which had been stripped of their stereo equipment.

It was also known as a high drug area.

When officers approached the defendant he stated that he was repairing his sound system.

One of the officers observed a bulge in his right front pant pocket and conducted a pat down.

The officer testified that although the object was a bit small to be a conventional weapon, it was hard and he feared it might be one of the new unconventional weapons he had heard about in police bulletins.

He seized the object and found it was a vial of cocaine.

The trial court denied the motion to suppress, and the defendant was placed on community control.

On appeal, the Fifth District affirmed, holding that the facts known to the officers gave them a founded suspicion of criminal activity which justified the stop and probable cause to think the defendant might be armed, which justified the frisk.

T.P. v. State, 16 FLW D2220 (Fla. 5th DCA Aug. 22, 1991).

Fake cocaine sale supports attempted buy of cocaine charge

The defendant was charged with attempted purchase of cocaine. The evidence at his trial showed that he purchased fake cocaine from undercover officers who were involved in a reverse sting operation.

He was convicted as charged,

and on appeal, the Fourth District affirmed, holding that a person who purchases fake cocaine from police is guilty of attempted purchase of cocaine.

Tibbets v. State, 16 FLW D2139 (Fla. 4th DCA Aug. 14, 1991).

Holding bag of real rocks isn't intent to deliver fake drugs

The defendant was charged with possessing with intent to sell or deliver a counterfeit controlled substance and filed a motion to dismiss.

The evidence on the motion showed that following an anonymous tip, a police officer approached the defendant and received permission to search him.

The officer found a clear ziplock sandwich bag containing twelve rocks of what appeared to be cocaine, but was not.

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

On appeal, the First District reversed, holding that the facts did not present a prima facie case because an ordinary plastic sandwich bag could not falsely identify its contents as cocaine.

Durr v. State, 16 FLW D2030 (Fla 1st DCA Aug. 5, 1991).

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Editorial Staff

Jerry Hill.....Publisher
Chip Thullbery.....Managing Editor
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Carl Weaver....Layout and Makeup

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P.O. Box 9000

Bartow, FL 33831-9000

(941) 534-4800