Tenth Circuit

Legal Advisor

Jerry Hill, State Attorney

Vol. 6, No. 7 July 1992

Law enforcement officers using witnesses who have prior convictions need to tell the prosecutor about their witnesses' records.

Unless the State Attorney's Office is aware that a witness has a conviction on his or her record, there is a danger that the case will be severely damaged. SAO Intake Director Mike Cusick details this problem in July Legal Adivsor.

Investigative Procedures

By Mike Cusick

Convicted felons as witnesses -- if you know, we need to know

A convicted felon can be impeached with his prior record during a jury trial.

When the trial judge reads the instructions to a jury, he tells them that in deciding whether or not to believe a witness, the jury may consider that the witness has been convicted of a felony or a misdemeanor involving truth or dishonesty.

Normally this rule benefits the prosecution because if the defendant decides to testify and has been convicted, we argue to the jury that he should not be believed because of that conviction. The same rule, however, can be used against us when our victim or witness has prior convictions.

We do not normally run a criminal history on our victims and witnesses unless we have a reason to believe that they have a criminal record.

If the investigating officer is aware of that record, it is important that he make the Intake Attorney aware of that fact by noting it on the Case Filing Checklist or the Request for Information form when it is returned to our office.

Sometimes this information will not affect a filing decision. It may affect our decision, however, where this witness is crucial to proving the case. If it is a one-on-one situation or if the witness is the sole identification witness, then we may not file the case.

We need to know this information as early in the case as possible. It does no good to file a case only to have to dismiss it later when we become aware that a crucial witness is a convicted felon.

FROM THE COURTS

Edited by Chip Thullbery

Entering a car in order to steal is burglary

The defendant was charged with burglary of a conveyance.

The evidence at his trial showed that he broke into an automobile and drove it from Daytona Beach to Seminole County where he was arrested.

He was convicted as charged.

On appeal, the Supreme Court affirmed his conviction, holding that a person is guilty of burglary of a conveyance when he enters a vehicle with the intent to steal that vehicle.

State v. Stephens, 17 FLW S380 (Fla. July 2, 1992).

Temporarily possessing a firearm during a burglary makes it an armed burglary

The defendant was charged with armed burglary.

The evidence at his trial showed that police were dispatched to a home burglary in progress where they discovered the defendant.

They ordered him out of the house and found that his pockets were filled with jewelry.

When the owner of the residence arrived he noticed that a handgun was also missing.

The defendant was questioned and admitted initially taking the gun with the intention of pawning it.

He stated however that he left the gun inside the home, and it was found near its original storage place.

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"armed"

The defendant was convicted as charged, and on appeal, the Third District affirmed, holding that where a defendant has possession of a gun during a burglary, even if that possession is only temporary, the defendant is guilty of armed burglary.

Jones v. State, 17 FLW D1395 (Fla. 3rd DCA June 2, 1992).

Court reverses itself: Hands are not deadly weapons

The defendant was charged with attempted first degree murder for beating up his wife with his fists.

At trial, the state sought an instruction for aggravated battery.

The defense objected contending there was no evidence that the defendant had used a deadly weapon.

The trial court overruled the objection and gave the instruction.

The defendant was then convicted of aggravated battery.

Initially, the Fifth District affirmed the decision, holding that hands could be a deadly weapon within the meaning of the aggravated battery statute.

However, after rehearing the case en banc the Fifth District reversed its decision and held that hands were not a deadly weapon within the meaning of the aggravated battery statute.

Dixon v. State, 17 FLW D1718 (Fla. 5th DCA July 17, 1992).

State court throws out cocaine baby prosecutions

The defendant was charged with delivery of a controlled substance to a minor.

The evidence at her trial showed that at the time she gave birth to

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"cocaine"
her child, cocaine passed by way of her blood through the umbilical cord during the thirty to ninety seconds following the infant's birth but before the cord was severed.

The defendant was convicted as charged, but on appeal, the Supreme Court reversed, holding that the statute prohibiting delivery of a controlled substance to a minor does not apply to the factual situation involved in the defendant's case.

Johnson v. State, 17 FLW S473 (Fla. July 23, 1992).

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Editorial Staff

Jerry Hill............................Pulbisher
Chip Thullbery.......Managing Editor
Mike Cusick....Legal Content Editor
Carl Weaver.....Layout and Makeup

The "Tenth Circuit Legal Adivsor"
is published by the
Office of the State Attorney
Drawer SA P.O. Box 9000
Bartow FL 33831-9000
(941) 534-4800