Tenth Circuit

Legal Advisor

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The Florida Legislature has made "stalking" a crime.

Stalking, whereby an obsessed, vindictive, or vengeful person follows the victim, or "stakes out" the victim's home or workplace, has gained such notoriety that state legislators have passed a new statute dealing with the problem.

The text of the new statute is printed in June Legal Advisor.

Investigative Procedures

By Mike Cusick

The new offense of stalking

The criminal offense prohibiting stalking became effective July 1, 1992. Since it is a new and unfamiliar crime, it is suggested that, where possible, the officer have contact with our office before filing the charge.

Most of the time, the offense will be a misdemeanor, so the officer should contact the Intake Unit of the Misdemeanor Division at 534-4943.

Please take time to review this statute, which we have included as part of this article.

Section 1. Section 784.048, Florida Statutes, is created to read:

784.048 Stalking; definitions; penalties--

(1) As used in this section:

(a) "Harasses" means to engage in a course of conduct directed at a specific person that causes substantial emotional distress in such a person and serves no legitimate purpose.

(b) "Course of conduct" means a pattern of conduct composed of a series of acts over a period of time, however short, evidencing a continuity of purpose.

Constitutionally protected activity is not included within the meaning of "course of conduct". Such constitutionally protected activity includes picketing or other organized protests.

(c) "Credible threat" means a threat made with the intent to cause the person who is the target of the threat to reasonably fear for his or her safety. The threat must be against the life of, or a threat to cause bodily injury to, a person.

(2) Any person who willfully, maliciously, and repeatedly follows or harasses another person commits the offense of stalking, a misdemeanor of the first degree, punishable as provided in s. 775.082, or s. 775.083.

(3) Any person who willfully,

maliciously, and repeatedly follows or harasses another person, and makes a credible threat with the intent to place that person in reasonable fear of death or bodily injury, commits the offense of aggravated stalking, a felony of the third degree, punishable as provided in s. 775.082, S. 775.083, or s. 775.084.

(4) Any person who, after an injunction for protection against repeat violence pursuant to s. 784.046, or an injunction for protection against domestic violence pursuant to s. 741.30, or after any other court imposed prohibition of conduct towards the subject person or that person's property, knowingly, willfully, maliciously, and repeatedly follows or harasses another person commits the offense of aggravated stalking, a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084

(5) Any law enforcement officer may arrest, without a warrant, any person he or she has probable cause to believe has violated the provisions of this section.

Section 2. This section shall take effect July 1, 1992.

Tenth Circuit
LEGAL ADVISOR
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FROM THE COURTS

Edited by Chip Thullbery

Okay to make DUI suspect say alphabet without Miranda warning

In this Highlands County case, the defendant was charged with DUI and filed a motion to suppress a field sobriety test.

The evidence on the motion showed that after the defendant was arrested she failed to pass a roadside sobriety case.

Another test was administered at the county jail. As part of the second test the defendant was instructed to recite the alphabet.

Despite three opportunities she couldn't get past the letter "P".

The trial court granted the motion to suppress on the grounds that the defendant had not waived her rights under Miranda prior to taking the test.

The state appealed this ruling to the circuit court which reversed the trial court's decision. The defendant then filed a petition for a writ of certiorari in the Second District.

However, the Second District denied the petition, holding that the recitation of the alphabet during a field sobriety test is not testimonial in nature and thus Miranda warnings are not necessary.

Contino v. State, 17 FLW D1363 (Fla. 2nd DCA May, 1992).

Officers may ask for drivers' license to establish identity

The defendant was charged with driving with a suspended license and filed a motion to suppress.

The evidence on the motion showed that an officer observed a young lady sitting on a bus bench.

Because of the way she looked at

(See "identity" next page)

him, he thought there might be something wrong and so he approached her.

She pointed out the defendant who was seated inside a vehicle close to the bus bench and told the officer that he was harassing her and that she was afraid of him. The officer approached the defendant and asked if he had a driver's license.

The defendant produced the license, and the officer ran a computer check which showed that it was suspended.

The trial court denied the motion to suppress, and the defendant pled no contest reserving his right to appeal. On appeal, the circuit reversed, ruling that the officer should not have asked the defendant for his license.

The state sought a writ of certiorari from the Third District, which issued the writ and quashed the trial court's order, holding that when a police officer makes a valid stop, he has the right to ask for a driver's license in order to assist him in making an identification.

State v. Ramos, 17 FLW D1231 (Fla. 3rd DCA May 12, 1992).

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

The evidence on the motion showed that an officer was conducting a surveillance of a parking lot because there had been reports of stolen vehicles. He observed the defendant drive into the lot and park. The defendant remained in the automobile for over ten minutes during which time he reached into the back seat several times.

When other automobiles drove into the lot, he stopped what he was doing. After about 20 minutes, the defendant drove out of the lot and the detective drove after him.

The defendant went to a

(See "identity" next page)

"identity"

warehouse area where he got out of his automobile.

The detective then approached him, identified himself as a police oficer, told the defendant he was suspicious of his actions in the parking lot and asked him for identification.

The defendant without hesitation told the detective that he did not have a driver's license but then volunteered his name and date of birth which the detective used to run a computer check.

The response indicated that there was an outstanding pickup order for the defendant, and the detective arrested him and conducted a search during which he found marijuana.

The trial court granted the motion to suppress, but on appeal, the Fourth District reversed, holding that the conversation between the officer and the defendant was not a stop but merely a citizen encounter during which the officer had the right to ask the defendant for identification.

State v. E.W., 17 FLW D1343 (Fla. 4th DCA May 27, 1992).

A portion of the Witness Tampering Statute is unconstitutional

The defendant was charged with witness tampering under section 914.22(1)(b), Florida Statutes, and filed a motion to dismiss which the trial court granted.

On appeal, the Second District reversed, holding that subsection (1)(b), unlike other subsections in the statute, clearly describes the type of inducement it prohibits and thus is constitutional.

State v. Sorrentino, 17 FLW D1120 (Fla. 2nd DCA Apr. 29, 1992).

Search of person in connection with search warrant is justified

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

The evidence on the motion showed that officers obtained a warrant to search an apartment.

The warrant provided that " further to be searched is any person present or arriving, known or suspected to be involved in the distribution of illegal drugs and any vehicle operated by such a person".

When the officers arrived to execute the warrant, they found the defendant sitting on the steps directly in front of the apartment and asked him his name.

After he told them, they searched him and found cocaine.

The officer also testified that he noticed the defendant shifting his weight from one foot to another as if he was going to run.

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

On appeal, the First District affirmed, holding that there was sufficient connection between the defendant and the premises to be searched so as to bring the search of the defendant within the purview of the warrant.

Stokes v. State, 17 FLW D1144 (Fla. 1st DCA Apr. 29, 1992).

Victim's injuries justified aggravated battery charge

The defendants, who were juveniles, were charged with being delinquent for among other things, committing an aggravated battery.

The evidence at their hearing showed that they and other defendants struck the victim and

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"battery" when he fell to the ground they kicked him in the head, ribs, and body.

The victim lost consciousness for a period of time and received a swollen eye, a swollen jaw, and a mark or scar under one of his eyes.

The court found the defendants guilty of aggravated battery.

On appeal, they argued that the state failed to prove that the victim suffered great bodily harm.

The Third District rejected this argument and affirmed, holding that the injuries the victim suffered amounted to great bodily harm.

E. A. v. State, 17 FLW D1332 (Fla. 3rd DCA May 26, 1992).

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