Tenth Circuit

Legal Advisor

Jerry Hill, State Attorney

Vol. 7, No. 6 June 1993

Defendants can pay a heavier price when the victim of a battery is pregnant -- the issue of aggravated battery on a pregnant victim is re-visited in this issue of Legal Advisor.

Also, the quest for the perfect written crime report advances another step in June Legal Advisor -- the importance of correct and complete identification of officers in written reports is highlighted by State Attorney Jerry Hill.

Special Legal Advisor Feature

By Jerry Hill

Officers need to be clear and consistent with their own identities in written reports

The purpose of this article is to ask you to do us a favor so that in return we may do you a favor.

It has long been a minor irritation to prosecutors and their secretaries that offense reports often contain names of law enforcement officers which are either incomplete or illegible.

For example, an officer might refer to himself or herself or another officer simply as "Officer Smith". On other occasions we have seen an officer use the term "I.O." or "Investigating Officer" in a report and then scribble an illegible signature at the bottom of the page.

This makes it difficult for us to prepare our cases, give proper discovery to the defense, and issue timely subpoenas.

The reason to discuss this problem now is that recently we have developed a computer program which will automate law enforcement vacation schedules and cross reference them with individual cases.

The obvious advantage of this program is that it will better allow us to prevent a trial requiring your presence to be scheduled during your vacation. However, in order for the program to work, we must be able to enter an officer's complete and accurate name on the witness list for each case.

In light of all this, we would ask that anytime you write or review a report, you make sure that your full name or the full name of any other officer mentioned is typed or printed at least once.

Thank you for your assistance in this matter.

Investigative Procedures

By Chip Thullbery

Charging aggravated battery with a pregnant victim

The Florida legislature has increased the penalty for battery on a pregnant victim from a first degree misdemeanor to a second degree felony.

The statute permits the charge to be filed whenever the battered victim is pregnant and the defendant knew or should have known she was pregnant.

As in any state statute, law enforcement is urged to use discretion when filing the charge. The obvious purpose of the statute was to make the offense more serious when direct or indirect injury could be caused to the fetus. This purpose should be kept in mind when deciding whether or not to charge the felony.

Some factors to consider are: the number of blows inflicted, the severity of the blows, where on the victim's body the blows were inflicted, the seriousness of any injury suffered by the victim or the fetus, and any statements made by the defendant as to his intent in striking the victim or injuring the baby.

While we do not want to discourage you from charging the more serious felony when warranted by the facts, you need to specify in your report the facts which justify the felony charge.

FROM THE COURTS

Edited by Chip Thullbery

Officer is restricted in telling what others told him

The defendant was charged with armed burglary and three counts of sexual battery with a deadly weapon.

At his trial, an officer testified that he had received a call in reference to a man with a gun chasing a female down the street.

The defense objected to these statements as hearsay, but the trial court overruled the objection and subsequently the defendant was convicted as charged.

On appeal, the Supreme Court reversed, holding that the officer's testimony was inadmissible because the inherently prejudicial effect of admitting into evidence an out-of-court statement relating accusatory information only to establish a logical sequence of events outweighs the probative value of such evidence.

Conley v. State, 18 FLW S298 (Fla. May 20, 1993).

Officer's observations justified stop of robbery suspects

The defendants were charged with robbery and filed a motion to suppress evidence.

The evidence on the motion showed that an officer received a report of a robbery at a liquor store. He was also told the robber had fled on foot heading east.

Upon receipt of this information the officer drove in that direction looking for anything out of the ordinary.

Fourteen minutes after the robbery he noticed a car following him one mile from the robbery

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"robbery"
scene.

As the officer slowed down it also slowed down. The officer then pulled into a parking lot to allow the car to pass through his headlights as it travelled down the road.

As the other car went past he saw people in the back seat lowering their heads as if to conceal their presence.

When he pulled behind the vehicle he again observed the same behavior. As a result of this, he stopped the vehicle.

The driver told the officer that the two men in the back seat had come to his house asking for a ride. They were both sitting on their knees.

A subsequent search of the car revealed gloves, a mask, a toy pistol, and a brown paper bag containing the money stolen for the liquor store.

The trial court denied the motion to suppress and the defendants were convicted as charged.

On appeal, the First District affirmed, holding that the facts the officer knew gave him a founded suspicion of criminal activity which justified his stop of the vehicle.

McKinnon v. State, 18 FLW D1245 (Fla. 1st DCA May 13, 1993).

Defendant's actions gave officer probable cause to believe defendant possessed cocaine

The defendant was charged with resisting an officer and filed a motion to suppress.

The evidence on the motion showed that an officer saw the defendant walking towards a place where people often concealed themselves to sell or use drugs.

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"cause"

He noticed that the defendant was walking in a manner so as to conceal something.

He then saw the defendant place a cigarette with a twisted end in his mouth and light it.

He said that it took longer than normal to light the cigarette and that there was a flame two or three inches high.

He also testified that his training and experience indicated to him that there was cocaine in the cigarette.

As a result of what the officer saw, he and another officer went up to the defendant and attempted to detain him.

The defendant struggled with them and managed to throw away the cigarette.

As a result, the officers arrested him for resisting an officer.

The trial court granted the motion to suppress but on appeal the Fourth District reversed, holding that the officer's observations gave him probable cause to arrest the defendant.

State v. Husky, 18 FLW D1230 (Fla. 4th DCA May 12, 1993).

Police must have probable cause to search students at school

The defendant, a juvenile, was charged with being delinquent for possessing cocaine.

He filed a motion to suppress.

The evidence on the motion showed that a middle school principal asked a school resource officer to search several students who were in his office because the principal had received information that the students were involved in drugs.

When the officer searched the defendant, he reached down into

(See "school" next page)

"school"

the defendant's pocket and found cocaine.

The officer testified that he conducted the search solely pursuant to the principal's request.

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

On appeal, the First District reversed, holding that before a law enforcement officer may search a student in a school setting, he, unlike a school official, must have probable cause to conduct the search.

A.J.M. v. State, 18 FLW D1241 (Fla. 1st DCA May 13, 1993).

Facts justified loitering and prowling arrest

The defendant was charged with loitering and prowling and filed a motion to suppress.

The evidence on the motion showed that an officer received a BOLO that a tall black male with a large build, dark clothing, and carrying a large black bag was in the back yard or driveway of a neighbor's house looking inside cars between 1:00 and 2:00 a.m. at a time when no one else was seen about.

The officer arrived with a dog and began to track from the point of the cars.

Shortly thereafter he saw the defendant emerge from a dark alley on a bicycle.

The defendant stopped and looked in all directions as if to see if somebody was watching.

According to the officer, the defendant fit the description he had been given.

When the officer ordered the defendant to stop, the defendant

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"prowling"
initially attempted to evade him but stopped when the dog barked.

The officer questioned the defendant about his reasons for being in the neighborhood and the defendant gave several conflicting stories.

The officer then arrested him for loitering and prowling.

The trial court granted the motion to suppress, but on appeal, the Second District reversed, holding that based on the facts that the officer knew, he had probable cause to arrest the defendant for loitering and prowling.

State v. Gibbons, 18 FLW D1203 (Fla. 2nd DCA May 5, 1993).

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is publihsed by
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Bartow FL 33831-9000
(941) 534-4800