

Tenth Circuit

Legal Advisor

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Vol. 9, No. 6

June 1995

The various types of arrest or detention and their individual legal constraints and requirements on police officers get a thorough going-over from prosecutor Hardy Pickard in this month's Legal Advisor.

Also, legal issues ranging from Miranda warnings to expectations of privacy were dealt with by Florida's judicial system. Check out the From The Courts section of Legal Advisor for breakdowns of the courts' decisions.

The three types of citizen/police encounter; and the legal requirements each type imposes upon law enforcement officers

By Hardy O. Pickard

Periodically, a review of certain basic arrest, interview, and search and seizure principles is helpful to law enforcement officers.

The three basic citizen/law enforcement contact situations.

There are three basic types of contact situations involving a citizen and law enforcement;

(1) probable cause arrest, (2) investigative detention or stop, and (3) citizen contact or citizen encounter.

Probable Cause Arrest

This is the simplest and requires Miranda warnings prior to interview.

A full search of the suspect and areas within his control are permissible.

Investigative Detention or Stop

Requires a reasonable suspicion that a suspect has committed, is committing, or is about to commit a crime.

Because the suspect is not in custody, Miranda warnings are not required prior to interview.

The suspect can be detained a "reasonable" length of time.

There is no set length of detention; it varies depending on your case. What may be a reasonable period in one case may be considered unreasonable in another. Bear in mind that if a suspect is detained too long, the courts will probably conclude that you have in effect arrested him.

The detention can only occur in the location where he was stopped.

If you wish to detain an individual until he can be viewed by a witness, the witness must be brought to where the suspect is located.

Unless your suspect consents, you cannot transport him anywhere.

Questions often arise as to the extent that you can search a person being detained.

If you have reasonable suspicion that the person is armed, a patdown is authorized.

If you touch an object that could reasonably be a weapon, it can be seized.

What if you feel something that you know is not a weapon, but believe to be drugs?

You can seize it only if you are able to satisfy a judge on a later occasion that your training and experience are such that you immediately recognized the object as drugs when you first felt it.

Situations frequently arise where a law enforcement officer detains someone that is suspected of being involved in a drug transaction and also suspects the drugs may be on his person, but does not have probable cause to arrest.

Can you search that person for drugs?

The answer is no.

You can request the person empty his pockets or spit out what is in his mouth, but that action must be voluntary on the part of the suspect and not based on orders from a police officer.

Because you are conducting only an investigative detention and the suspect is not under arrest, an involuntary search for drugs is not proper.

The Citizen Contact or Encounter

The third level of contact is the citizen contact or citizen encounter.

This does not require either probable cause or reasonable suspicion.

Any law enforcement officer has the right to approach any citizen and request permission to talk to him.

The citizen can refuse.

If the citizen agrees to talk, it must be voluntary on his part.

The citizen is free to end the conversation at any time and walk away unless you have developed either reasonable suspicion or probable cause to detain him further based upon the results of the conversation.

No Miranda warnings are required and no search or patdown is permitted.

A situation often arises where you wish to approach a citizen to engage him in conversation, but the citizen immediately begins to walk or run away.

Does that give you the right to chase and detain the citizen?

Without anything more, the answer is no.

Because you were only conducting a citizen encounter in the first place, a citizen can break off the contact and leave your presence at any time he so desires.

You can forcibly detain him only if you have developed probable cause or a reasonable suspicion such as would justify an arrest or an investigative detention.

Sometimes, in actual practice, there is a very fine line between whether you have arrested an individual, have detained him for investigative purposes, or have only had a citizen's contact with him.

In most cases, a court's ultimate ruling will depend not on what the suspect says or does, but on what you as a law enforcement officer say or do.

FROM THE COURTS

Edited by Chip Thullbery

There is no such thing as attempted felony murder

The defendant was charged with and convicted of armed robbery and attempted first degree felony murder.

felony murder conviction, holding that there is no crime of attempted felony murder.

On appeal, the Supreme Court reversed the attempted first degree

State v. Gray, 20 FLW S204 (Fla., May 4, 1995).

No need for Miranda warnings during telephone interviews

The defendant, a juvenile, was charged with grand theft and filed a motion to suppress statements he made to a detective.

The facts on which the motion was based were that after the detective received information that the defendant was involved in a theft, he telephoned the defendant at home.

During the conversation, the defendant confessed to the theft.

The detective did not give Miranda warnings.

The trial court granted the motion to suppress, but on appeal the Third District reversed, holding that an officer need not give a suspect Miranda warnings when the suspect is speaking to the officer over the telephone from his home.

State v. D.M., 20 FLW D1002 (Fla. 3d DCA, Apr. 26, 1995).

Evidence lawfully seized in one case can be used in another

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

The facts on which the motion was based were that in an unrelated case the defendant voluntarily provided the officer with hair and blood samples.

Subsequently, the blood samples were used to link the defendant to the murder.

The trial court denied the motion to suppress, and on appeal, the Supreme Court affirmed, holding that once the blood samples are validly obtained in an unrelated case, the police were not restrained from using the samples as evidence in the murder case.

Washington v. State, 20 FLW S197 (Fla., Apr. 27, 1995).

Privacy of toilet stall protected

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

The facts on which the motion was based were that the officers observed the defendant exchange money for a substance they suspected might be drugs.

They then saw the defendant pick up an aluminum can and enter a rest room where he went into a toilet stall and closed the door.

The officers entered the toilet stall and found the defendant in possession of crack cocaine.

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

On appeal, the Second District reversed, holding that the officers did not have a founded suspicion of criminal activity and because they did not, they could not enter the

(See "Privacy" next page)

"Privacy"

closed toilet stall since the defendant had an expectation of privacy in that area.

Ramirez v. State, 20 FLW D1119
(Fla. 2d DCA May 5, 1995).

Controlled buy can establish probable cause

The defendants were charged with possession of cannabis and filed a motion to suppress evidence seized during the execution of a search warrant, asserting that the affidavit upon which the warrant was based did not establish probable cause.

The affidavit stated that a confidential informant who had assisted the sheriff's office in the past and provided reliable information was used to make a controlled buy of drugs from the defendant.

The affidavit went on to set out

the details of the buy.

The trial court granted the motion to suppress, finding that the affidavit did not establish the informant's reliability.

The State appealed, and the Second District reversed, holding that although it agreed that the affidavit did not establish the informant's reliability, the controlled buy was sufficient to provide probable cause for a search.

State v. Reyes, 20 FLW D1120
(Fla. 2d DCA Oct. 19, 1994).

Ramirez v. State, 20 FLW D1119

(Fla. 3d DCA May 3, 1992)

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The "Tenth Circuit Legal Advisor"

is published by the

Office of the State Attorney

Drawer SA

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Bartow, FL 33831-9000

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State v. Reyes, 20 FLW D1120

(Fla. 3d DCA Oct. 19, 1994)

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