Tenth Circuit

Legal Advisor

Jerry Hill, State Attorney

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Using confidential informants with pending charges or on probation

By Wayne Durden

It is the policy of the State Attorney's Office that the use of confidential informants with pending charges, or who are on probation should be approved in advance by the appropriate division director of the office.

Otherwise we are placed in a position of not knowing that law enforcement has made representations to defendants that in light of their cooperation they may receive some degree of leniency, while our prosecutor may be making contrary representations to judges and defense counsel.

It is not likely that defendants qualifying for enhanced sentencing, such as 10/20/Life or

INSIDE:

Prison Releasee Reoffenders, would be considered for lenient sentencing as a result of work as a confidential informant.

Consequently, the following procedure must be adhered to.

The criminal investigator must contact the appropriate division director, indicated below, and seek approval for use of the defendant as an informant before use of the defendant as an informant.

The SAO director will review the pending file(s) in a timely manner, and either approve or disapprove of the request.

If approved, the investigator must forward to the director a letter documenting the request.

The letter should reflect the investigator's request to use the defendant an an informant, your expectations for what the defendant can do as an informant WITHOUT IDENTIFYING SPECIFIC INVESTIGATORY TARGETS OR OTHER INFORMATION THAT WOULD DISCLOSE THE IDENTITY OF THE DEFENDANT AS AN INFORMANT IN ANY SPECIFIC INVESTIGATIONS OR OTHERWISE COMPROMISE THE SAFETY OF THE DEFENDANT AS AN INFORMANT.

You must also indicate how long we should pend prosecution to allow for completion of assistance rendered by the defendant.

If the defendant is on probation, the investigator must also seek and receive permission of the judge who sentenced the defendant, or his or her successor judge in the division to which the defendant's case was assigned.

Upon completion of assistance by the defendant or failure by the defendant to render expected assistance, the investigator must forward a second letter to the director, informing the State Attorney's Office of the level of assistance, or lack thereof, rendered by the defendant and further indicating what degree of leniency you feel the defendant has earned as a result of the assistance provided.

THE SECOND LETTER SHOULD LIKEWISE NOT DISCLOSE ANY INFORMATION THAT WILL RESULT IN IDENTIFYING THE DEFENDANT AS AN INFORMANT IN ANY SPECIFIC ONGOING INVESTIGATION OR PROSECUTION COMMENCED AS A RESULT OF INFORMATION

PROVIDED BY THE DEFENDANT.

Please note that failure to comply with this procedure will likely result in this offfice refusing to recognize assistance provided by the defendant despite whatever expectations you have otherwise made to a defendant pending prosecution.

The following division directors should be consulted in accordance with this policy.

Polk County defendants with felony charges pending, or any combination of felony and other charges pending — Wayne Durden, 534-4834.

Polk County defendant with misdemeanor charges only pending — Keith Spoto, 534-4926.

Polk County defendants with juvenile charges only pending — Deb Oates, 534-4905.

Polk County defendants with violation of probation charges only pending — Gary Allen, 534-4803.

All defendants charged in Highlands or Hardee Counties — Steve Houchin in Sebring, 386-6562.

The procedure contemplates the use of informants ONLY in a NON-TESTIFYING capacity.

In the event you wish to use ANY informant, whether with charges pending or not, in a testifying capacity, specific prior approval must be obtained in person from Felony Division Director Wayne Durden and Felony Intake Director Mike Cusick in Polk County or from South Counties Director Steve Houchin in Hardee and Highlands Counties.

Questions about this procedure should be directed to Wayne Durden at 534-4834.

Trespass charges in Polk County parks

By Paul Bueker

Law enforcement officers are not authorized to issue citations for trespassing in Polk County parks solely on the grounds of being in a county park after it is closed.

Section 810.09, Florida Statutes, requires that the specific words “no trespassing” be clearly posted on signs before someone is in violation of the statute.

All Polk County parks have signs which clearly state the hours during which the park is closed, but most, if not all, do not state “no trespassing” as required by Florida statute.

Section 10.6-16, Polk County Ordinances, is the county equivalent regulating conduct in Polk County parks.

This ordinance requires that the subject must be given an oral warning to leave the park before there is a violation of the ordinance.

The officer may only issue a citation where an oral warning has been given and the subject refuses to leave the park.

Any citation that is issued which does not comply with the state statute or county ordinance is void.

Any evidence obtained as the result of an arrest based upon an improper charge under the statute or ordinance would not be admissible in court.

Therefore, it is important that deputies charged with patrolling these parks understand the requirements for enforcing these laws.

FROM THE COURTS

Edited by Chip Thullbery

Purposely hitting occupied car can be battery

The defendant was charged with aggravated battery.

At his trial, the evidence established that he intentionally rammed his truck into a truck occupied by the victim. The victim was not injured.

The defendant was convicted as charged.

On appeal, he argued that he was not guilty of aggravated assault because the State did not establish the intentional touching element in battery.

The First District rejected this argument and affirmed the conviction, holding that there need not be a touching of a victim's person but only a touching of something connected to the victim's body for a battery to occur.

Clark v. State, 25 FLW D78 (Fla. 1st DCA Dec. 9, 1999).

Habitual traffic offender stays one until license restored

The defendant was charged with driving with a suspended license as a habitual traffic offender.

He filed a motion to dismiss, asserting that he was not a habitual traffic offender because although he had not sought reinstatement of his license he was eligible to do so because the period of suspension had expired.

The trial court granted the motion and reduced the charge to driving on a suspended license.

On appeal, the Third District reversed, holding that a person retains the habitual traffic offender designation until his or her license is reinstated.

State, v. Green, 24 FLW D2712 (Fla. 3d DCA Dec. 8, 1999).

Probation officer's search can produce probable cause for search warrant

The defendant was charged with possession of a firearm by a convicted felon and filed a motion to suppress evidence.

The facts on which the motion was based were that while the defendant was on community control, his supervising officer conducted a search of his home.

During the search, FDLE and sheriff's agents remained outside the home for the officer's safety.

The officer found bullets, a machete, and a safe of the kind which is used to store guns.

Based on this information, the FDLE agent obtained a search warrant which he executed, finding two rifles, a shotgun and a pistol.

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

On appeal, the Fourth District affirmed, holding that evidence obtained during a valid administrative search may be used to obtain a search warrant.

Lawson v. State, 24 FLW D2683 (Fla. 4th DCA Dec. 1, 1999).

Proof of negligence not necessary for DUI manslaughter conviction

The defendant was charged with DUI manslaughter.

At his trial he asked for a special jury instruction which stated that proof of negligence on his part was necessary in order for him to be convicted.

The trial court denied the request, and the defendant was found guilty as charged.

On appeal, while finding other error, the Supreme Court held that the trial court was correct in ruling that negligence on the part of the defendant is not an element of DUI manslaughter.

State v. Hubbard, 24 FLW S575 (Fla. Dec. 16, 1999).

Defendant's possession was not criminal possession

The defendant was charged with possession of cocaine.

At his trial, the evidence showed that a drug dealer approached the defendant and tried to sell him cocaine.

The defendant refused several times, but the dealer handed him a piece of rock cocaine anyway and told him it was "on the house".

Annoyed, the defendant decided to turn the dealer into police, and so he walked up to an officer, gave him the cocaine, and told him what happened.

The officer then arrested the defendant.

The defendant was convicted as charged, but on appeal, the Third District reversed, holding that a person who takes temporary possession of a controlled substance in order to turn it over to authorities is not guilty of the crime of possession.

Stanton v. State, 25 FLW D14 (Fla. 3d DCA Dec. 23, 1999).

Burglary tools must be used to commit burglary

The defendant was charged with possession of burglary tools.

At his trial, the evidence established that he entered the fenced yard of a school and used a screwdriver and wirecutters to steal a bicycle which was chained to a bike rack.

On appeal, the Supreme Court reversed, holding that the state must establish that a defendant has the intent to use the tools involved to commit a burglary as opposed to any crime which is committed during the burglary.

Calliar v. State, 24 FLW S564 (Fla. Dec. 2, 1999).

Facts known to officer created reasonable suspicion of criminal activity

The defendant was charged with burglary, grand theft and possession of burglary tools and filed a motion to suppress.

The facts on which the motion was based were that an officer was dispatched to an apartment complex at three in the morning on a call of suspicious activity in the parking lot.

The officer arrived one minute later and saw two vans parked back to back with their rear doors open.

Several people, including the defendant, started to walk away from the vans when they saw the officer approach.

The officer detained the defendant and found that he had an outstanding warrant for his arrest.

Upon taking him into custody, he searched the van and found stolen air conditioners, a pry bar, and other tools.

The trial court denied the motion, and on appeal, the Third District affirmed, holding that the facts known to the officer gave him a reasonable suspicion that the defendant was engaged in criminal activity.

Hernandez v. State, 24 FLW D2634 (Fla. 3d DCA Nov. 24, 1999).

Enticing A Child Statute unconstitutional

The defendant was charged with enticing a child in violation of section 787.025, Florida Statutes, and filed a motion to dismiss, asserting that the statute was unconstitutional.

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

On appeal, however, the Second District reversed, holding that the statute was unconstitutionally vague.

Brake v. State, 24 FLW D2734 (Fla. 2d DCA Dec. 10, 1999).

What is an antishoplifting device countermeasure?

The defendants were charged with using an antishoplifting or inventory control device countermeasure and filed a motion to dismiss, asserting that the State could not establish a *prima facie* case.

The facts on which the motion was based were that the defendants covered a store's security sensors with tinfoil in order to evade detection when they attempted to walk past the sensors with stolen merchandise.

The trial court granted the motion, and on appeal, the Third District affirmed, holding that tinfoil cannot be an antishoplifting or inventory control device countermeasure as defined in section 812.015, Florida Statutes, because it was not designed, manufactured, modified, or altered to defeat a store's security system.

State v. Blunt, 24 FLW D2642 (Fla. 3d DCA Nov. 24, 1999).

Tenth Circuit
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Tying it together
SAO - Sheriff's Office liason

The Polk County Sheriff's Office and the State Attorney's Office form a team for the disposition of criminal cases.

The deputy is the point man for a complex and demanding operation — successful prosecution of a person charged with a crime.

When a crime is committed in the county, the deputy arrests the suspect, collects evidence, interviews witnesses, writes a description of the crime location, sometimes takes photos, and submits his or her findings in the form of an arrest report or complaint affidavit.

This arrest report or affidavit is forwarded to the State Attorney's Office and is the basis for the case which the prosecutors present to the courts for disposition.

This is a long and complex process which often requires further communication and cooperation between law enforcement and the prosecutor's office.

The Sheriff's Office Liason Officer makes this coordination easier and more effective.

The Liason Officer knows his department's personnel, routines, chains of command, shift organizations, and capabilities. He makes this knowledge available to the assistant state attorneys charged with disposing of the cases made by the deputies.

When a case comes into the State Attorney's Office, it is reviewed by the Intake Division and assigned to a prosecutor.

A Request For Information form is sent to the sheriff's office through the Liason Officer.

By means of the Request For Information form, the prosecutor can get data on victim and witness statements, transcripts, evidence lists, bank records, accident reports medical records, value of stolen property, search warrants and other needed case information.

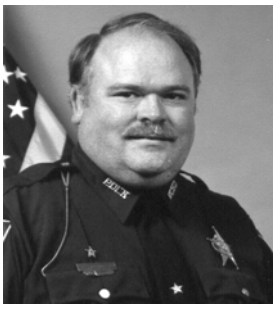
By knowing who works where at what time, the Liason Officer can go straight to the deputy or

supervisor most directly involved in the case, rather than just shotgunning the request to the sheriff's office and waiting for an answer.

While the large size and wide jurisdiction of the Polk County Sheriff's Office mandate a permanent liason officer within the Bartow prosecutors' office, the same principles of coordination and communication apply to relationships with other law enforcement agencies within the Tenth Judicial Circuit.

The State Attorney's Office seeks the same level of cooperation with these other agencies within the circuit.

Royce Adkins: Liason Detective, Polk County Sheriff's Office



Det. Adkins has worked as liason between SAO and The Sheriff's Office since winter of 1999.

He began his law enforcement career with the Bartow Police Department in 1976, joined the Polk Sheriff's Office as a corrections officer in 1977, and attended the Law Enforcement Academy at Polk Community College. He was assigned to uniform patrol with the Sheriff's Office upon graduation.

Other Sheriff's Office duty assignments include Misdemeanor investigations, tactical unit, Patrol Division Special Investigations, property crime investigations, School Resource Officer practicioner, D.A.R.E. instructor, Intelligence Unit detective, and Polk County Crime Stoppers law enforcement coordinator.

A Polk County native, Adkins is 43 years old, married with two daughters, a Baptist, a golfer and bowler.

"I see the liason position as a vital position acting as an intermediary between two very large, complex law enforcement organizations." Adkins said.