TENTH CIRCUIT

Legal Advisor

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LEGAL ISSUES INVOLVING JUVENILES

BY DEB OATES

SCHOOL ISSUES

Weapons on School Property - Florida Statute 790.115 makes it a crime to bring a weapon on school property. The legislature has cleared up the "common pocketknife" problem with this statute by making all unauthorized knives illegal on school property.

School property has been defined very broadly. It includes the school property itself, as well as a bus stop, a bus or within 1000 feet of the property of a public or private elementary, middle, high or vocational school.

If the possession involves the same incident as a trespass to the school, the charge becomes armed trespass which is a third degree felony.

Truants - A truant can be picked up by a law enforcement officer who has "reasonable grounds to believe the child is absent from school without authorization" for the purpose of returning the child to school. At that time the juvenile, for the safety of the officer, can be patted down for weapons. The child is not under arrest and therefore cannot be "searched incident to arrest." See Florida Statute 984.13

JUVENILE GUN LAWS

Prior to a detention hearing, a juvenile shall be detained for any use or possession of a firearm during the commission of a crime. This includes detention for simple possession of a firearm pending a detention hearing.

At a disposition, or sentencing hearing, there are mandatory stays for certain gun offenses. All mandatory times begin to run after sentencing—with no credit for time served, even when the juvenile has been held since arrest.

The use or possession of a firearm in the commission of a crime requires a minimum mandatory detention stay of 15 days. The second such offense requires a minimum detention stay of 21 days. A second offense for simple possession of a firearm requires up to 15 days in detention.

Note that the firearm is to be seized and disposed of by law enforcement.

10-20-Life for Juveniles - Any juvenile who is 16 or 17 years of age and is charged with possession

or discharge of a firearm during the commission of a crime must be direct filed upon as an adult. While the offender is initially charged as a juvenile, when a qualifying offense is filed by the state, the juvenile must be transferred to adult court for prosecution. In addition, the court must sentence the juvenile as an adult. See Florida Statute 985.227.

Extension of Detention Time - The state can move, for good cause, for an extension of detention time from 21 days to 30 days for a child charged with a capital, life, first degree or violent second degree felony. See Florida Statute 985.215(5)(f).

ADDITIONAL NOTES

Statements from Juvenile Victims, Witnesses and Defendants - It is permissible to take taped statements from juvenile defendants. Many officers think that tape recorded statements may not be taken from juvenile offenders, victims or witnesses (In fact, it is encouraged). The only prohibition involving taped statements has to do with victims and witnesses of child sexual abuse. While some discretion is advised in the case of very young victims and witnesses, it should be noted that many of the victims, witnesses and defendants in juvenile court are teenagers.

Co-defendant Testimony - The same policy that exists in adult court prohibiting the use of co-defendant testimony applies to juvenile court. There is a misconception that when the defendant is a juvenile, co-defendant testimony will be used. The same rules of evidence and proof requirements apply in juvenile court as in adult court. Any exceptions to this policy must be approved, prior to prosecution, by Mr. Hill after consultations with the investigators and attorneys handling the case. Merely calling a co-defendant a "witness" does not get around the policy.

**********FROM THE COURTS**********

ACCIDENT REPORT PRIVILEGE DOES NOT APPLY TO HIT AND RUN DRIVERS

The defendant was charged with leaving the scene of an accident with death. At trial, the court allowed an officer to testify over defense objection about admissions which the defendant made when the officer found the defendant at his home after the accident. The defendant was convicted as charged. On appeal, the Second District affirmed, holding that the defendant's admissions were not protected by the accident report privilege because he was a suspected hit and run driver. *Cummings v. State*, 26 FLW D126 (Fla. 2d DCA Dec. 29, 2000).

SEXUAL PREDATOR STATUTE UPHELD

The defendant was charged with sexual offenses. He filed a motion to prohibit imposition of sexual predator sanctions relating to designation, registration, and community notification, arguing that sections 943.043, 943.045, 944.606, and 944.607, Florida Statutes, were unconstitutional. The trial court denied the motion, and on appeal, the Fifth District affirmed, holding that the statutes providing for sexual predators do not violate a defendant's due process rights or right to privacy. *Johnson v. State*, 25 FLW D2761 (Fla. 4th DCA Dec. 1, 2000).

PASSING IN FOG IS RECKLESS

The defendant was charged with vehicular homicide 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 defendant attempted to pass another vehicle on a foggy road. While he was doing so, he struck a speeding motorcyclist head on and killed him. At the time the defendant was in a passing zone and was only driving at a speed which was slightly more than the vehicle he was passing. The trial court granted the motion, but on appeal, the Fifth District reversed, holding that the act of passing in fog is sufficiently reckless to justify a vehicular homicide charge. *State v. Ynocenscio*, 25 FLW D2798 (Fla. 5th DCA Dec. 8, 2000).

STORE CUSTOMER WAS A CITIZEN INFORMANT

The defendant was charged with grand theft and filed a motion to suppress evidence. The facts on which the motion was based were that an off duty police officer who was working as a security agent in a department store was approached by a woman who said that she had just seen three men run out of the store with a duffle bag full of the store's clothes. The officer asked the woman to go with him, and when they got outside she pointed out the men as they were getting into a car. The officer was able to obtain a tag number and have the car stopped. As a result of the stop, merchandise from the store was seized and the defendant arrested. The trial court denied the motion to suppress, and the defendant was convicted as charged. On appeal, the Fifth District affirmed, holding that the woman was a citizen informant whose information was thus sufficiently reliable to justify the officer in initiating the stop of the defendant's vehicle. *Carattini v. State*, 26 FLW D175 (Fla. 5th DCA Jan. 5, 2001).

MULTIPLE DUI CONVICTIONS ARISING FROM ONE INCIDENT TREATED AS ONE PRIOR OFFENSE FOR FELONY DUI PURPOSES

The defendant was charged with felony DUI and filed a motion to dismiss, asserting that the state could not establish the requisite number of predicate offenses. The facts on which the motion was based were that some of the predicate offenses on which the state relied arose from one incident. The trial court granted the motion, and on appeal, the Fourth District affirmed, holding that multiple DUI convictions arising from one incident may only be counted as one predicate offense for purposes of charging a defendant with felony DUI. *State v. Laniez*, 25 FLW D2710 (Fla. 4th DCA Nov. 22, 2000).

Tenth Circuit
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