



Jerry Hill
State Attorney

LEGAL ADVISOR

OFFICE OF THE STATE ATTORNEY
TENTH JUDICIAL CIRCUIT

VOLUME XXV, ISSUE V

November 2011

INSIDE

**A Law Enforcement
Officer's Response to
Threats:
An Analysis of Florida
Statute 838.021**

From the Courts

Office Locations:

Hardee County

124 South 9th Avenue
Wauchula, FL 33837
Phone: (863)-773-6613
Fax: (863)-773-0115

Highlands County

411 South Eucalyptus
Sebring, FL 33870
Phone: (863)-402-6549
Fax: (863)-402-6563

Polk County

P.O. Box 9000, Drawer SA
Bartow, FL 33831-9000
Phone: (863)-534-4800
Fax: (863)-534-4945

Child Support Enforcement

215 N. Floral Avenue
Bartow, FL 33831
Phone: (863)-519-4744
Fax: (863)-519-4759

Lakeland Office

930 E. Parker Street, Suite 238
Lakeland, FL, 33801
Phone: (863)-802-6240
Fax: (863)-802-6233

Winter Haven Office

Gill Jones Plaza
3425 Lake Alfred Rd. 9
Winter Haven, FL 33881
Phone: (863)-401-2477
Fax: (863)-401-2483

A Law Enforcement Officer's Response to Threats: An Analysis of Florida Statute 838.021

By: Paul Wallace: Assistant State Attorney

The purpose of this article is to address the Florida Statute which makes it a third degree felony to threaten harm to a law enforcement officer. The goal is to assist you in understanding under what circumstances such a charge should be made.

In 1974, the Florida Legislature enacted a statute which has had several minor changes throughout the years. The present statute reads in pertinent part as follows:

838.021 Corruption by threat against public servant

(1) *It is unlawful to harm or threaten harm to any public servant or his or her immediate family, with the intent to:*

(a) *Influence the performance of any act or omission which the person believes to be within the official discretion of the public servant.*

(3)(b) *Whoever threatens unlawful harm to any public servant or to any other person with whose welfare the public servant is interested shall be guilty of a felony of the third degree.*

A simple reading of subsection (3)(b) would appear to make it a third degree felony for a person to threaten physical harm to you or any of your immediate family. A review of some arrest affidavits which have been submitted to our office over the years makes it clear that many law enforcement officers read this statute in this manner. Usually this charge is made when an arrestee makes a threat to cause physical harm to the officer who has arrested them.

A couple of appellate court decisions have addressed this issue. These decisions have ruled that subsection (3) only provides the designation of the degree of crime and does not create a separate crime to that outlined in subsection (1). The legislature was sloppy in the creation of this statute because it appeared to create a crime



Assistant State Attorney, Paul Wallace has been with our office for 32 years.

under subsection (3) which has one less element than the crime created under subsection (1). This element is that the person making the threat intends to influence the public servant's future conduct. This future conduct can be an act or omission to act which the person believes to be within the discretion of the public servant. The rulings by the appellate courts make it clear that if the threat is not done with this intent then there is no violation of this statute.

As a law enforcement officer you are likely to be confronted with threats to harm you or your family. When you face these situations and consider whether to charge under this statute please make the following analysis.

First, decide whether the verbal abuse you suffered was a threat to harm you or simply the angry words of an upset or drunken arrestee. If you determine that the words do in fact constitute a threat to harm you or any member of your immediate family, you must then decide whether there was proof that the motive behind the threat was to influence your future conduct. If the threat to harm you was motivated solely because you had already taken action, such as made an arrest, then a charge should not be filed under this statute. Only if you can identify some future act that is attempted to be influenced should you make a charge of corruption by threat against public servant. Of course, you should clearly identify this future act in your arrest affidavit. A few examples of your future conduct which a person might be concerned with are the decision to arrest, the decision to file a charge, the decision of what charges to file, the decision to conduct a search or the decision to seize items as evidence or contraband.

If you have been threatened with future harm but come to the conclusion that a charge should not be made under this statute, it is still important to document that the threat was made. This should be clearly documented in both your written report and any arrest affidavit. It is important that the Assistant State Attorney handling the case be aware of the nature of the threat. It could also be important for bond consideration that the reviewing judge also be aware of the threat to you. It might also be a factor which could have an impact at the time of sentencing.

Hopefully, you have a better understanding of what type of threats can result in a charge under Florida Statute 838.021. However, if you have any questions concerning this issue relating to a specific case, please contact the Felony Intake Division of the State Attorney's Office.

Gathering Reports and Information from Migrant Workers

When taking reports and/or information from migrant workers, please remember these extra steps:

- 1) Take a picture of the worker (sometimes they will change their ID and not admit to being the same person until confronted with their own photo).
- 2) Get their crew leader's name and numbers. Often, migrant workers will work with the same crew chief from season to season and that chief will know how to reach them.

Did you know?

You can access past Legal Advisor issues on our website. Go to www.sao10.com, and select the Legal Advisor button located in the top left of the website.

Changes to Reimbursement for "Witness Fees"

The manner in which law enforcement officers are to be reimbursed for "witness fees" has changed. This may affect just a handful of agencies. Beginning Dec. 1, the Clerk of Courts Office will only reimburse officers mileage for appearing in traffic court, in accordance with Sections 92.143 and 92.141, Florida Statutes. The current rate is 44.5 cents a mile. In order to be reimbursed, the officer must use his or her personal vehicle and must not be assigned an agency vehicle. A \$5 witness fee will no longer be paid. All expenses associated with duty-related testimony, other than traffic court appearances, is the responsibility of the officer's agency.

FROM THE COURTS...



<http://www.sao10.com>

Bartow Phone Numbers:

Switchboard	534-4800
Misdemeanor Intake	534-4927
Misdemeanor	534-4926
Domestic Violence	534-4861
Felony Intake	534-4987
Felony	534-4964
Investigations	534-4804
Violation of Probation	534-4803
Child Abuse	534-4857
Homicide	534-4959
On Call Phone	860-8243
Worthless Checks	534-4874
Juvenile	534-4905
Main Fax	534-4945
Witness Management	534-4021
Fax	534-4034

ANOTHER CONSENSUAL ENCOUNTER CASE

The defendant was charged with three counts of burglary and filed a motion to suppress a confession he made to police. The facts on which the motion was based were that an officer saw the defendant standing in a field with several other people. Thinking that the defendant looked like a person the officer had seen on a surveillance video committing car burglaries, the officer drove over to the defendant and asked to speak to him. When the defendant came to the officer's car, the officer read the defendant his Miranda warnings. The defendant asked if he was under arrest, and the officer replied that he was not. During the ensuing encounter, the defendant at first denied being involved in the burglaries but later confessed. The trial court denied the motion, and the defendant was convicted as charged. On appeal, the defendant argued that the reading of Miranda warnings turned what had been a consensual encounter into an illegal detention. The Supreme Court rejected this argument and affirmed, holding that the reading of Miranda warnings during a consensual encounter does not always turn that encounter into an investigatory stop. *Caldwell v. State*, 35 FLW S425 (Fla. July 8, 2010).

OFFICERS MAY OBTAIN PRESCRIPTION RECORDS WITHOUT WARRANT OR SUBPOENA

The defendant was charged with three counts of obtaining a controlled substance by fraud and filed a motion to suppress evidence. The facts on which the motion was based were that a law enforcement officer received information that the defendant was doctor-shopping in order to buy pain medication. Based on that information, he obtained the defendant's patient profile and prescriptions from several pharmacies without obtaining a search warrant or subpoena. The trial court granted the defendant's motion, but on appeal the Second District reversed and joined the First District in holding that section 893.07(4), Florida Statutes, authorizes a law enforcement officer to obtain patient profiles and prescriptions from pharmacies without a search warrant or subpoena and that section 893.07(4) is constitutional. *State v. Tamulonis*, 35 FLW D1535 (Fla. 2d DCA July 9, 2010).

LEWD BATTERY CANNOT SERVE AS A PREDICATE CONVICTION FOR FELONY BATTERY

The defendant was charged with, among other things, felony battery. After a jury found him guilty of simple battery, he waived his right to have the jury hear the second phase of the trial and allowed the court to determine whether he was guilty of felony battery. Based on a prior conviction for lewd or lascivious battery, the court found that he was guilty of felony battery and sentenced him accordingly. On appeal, the Second District reversed, holding that lewd or lascivious battery cannot serve as a predicate conviction for felony battery. *Aldacosta v. State*, 35 FLW D1861 (Fla. 2d DCA Aug. 18, 2010).

Officers now can submit their vacation to Witness Management at the following email address:

witmanagement@sao10.com

The "Legal Advisor" is published by:
Office of the State Attorney, 10th Circuit
P.O. Box 9000 Drawer SA
Bartow, FL, 33831

The Legal Advisor Staff

Jerry Hill, Publisher

Email: jhill@sao10.com

Chip Thullbery, Managing Editor

Email: cthullbery@sao10.com

Michael Cusick, Content Editor

Email: mcusick@sao10.com

Casey Gorman, Graphic Design

Email: cgorman@sao10.com