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TENTH JUDICIAL CIRCUIT

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Legal Odds & Ends

From the Courts

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Legal Odds & Ends

Written by: Michael Cusick: Assistant State Attorney

Synthetic Cannabinoids

The legislature is trying to stay ahead of the curve on synthetic cannabis legislation. They have added 92 additional chemical combinations during the recent legislative session. The problem is that the groups that manufacture the drugs change the chemical composition to get around the banned substances.

For the purpose of a criminal possession prosecution, we must be able to show that the substance that the defendant possessed was a controlled substance. Since there are very few field tests for these substances, normally you are not going to be able to establish probable cause to make an arrest at the scene. The fact that the defendant tells you that the substance is synthetic cannabis is not sufficient to make an arrest. He could be, and probably is, wrong.

If you make contact with a subject who is in possession of these substances, do not make an arrest for this charge. If you have other charges, you can make an arrest for those other charges. Otherwise, tell the subject that a charging decision will be made once the lab result comes back. If you arrest the defendant for other charges, it will be important to get the lab results expedited so that, if the lab result is positive for a controlled substance, you can get the synthetic cannabis charge filed before the defendant pleads on the other pending charge(s). If the subject is not arrested on other charges, you can file the charge once you have received the lab report.

Prescription Drugs

It is not illegal to possess a prescription drug in something other than the original prescription bottle. There is no law which requires that a prescription drug



Felony Intake Director, Michael Cusick has been with our office for 27 years.

be carried in its original container. As a result, if you come upon a person who has a prescription drug not in the original container but who claims to have a prescription, do not make an arrest. Seek to verify the prescription information by asking the person to provide information as to the pharmacy where the prescription was filled. If you cannot verify the information with the pharmacy and you have questions as to the person's credibility, seize the drug and tell the person to bring proof as to the prescription to you within 48 hours. Tell the person that you intend to file charges, if proof of a prescription is not provided within the time period. Follow through with that threat if the subject fails to provide proof of a prescription.

Permanently Revoked Driver Licenses

While most DWLSR charges are misdemeanors, one main exception to that rule is where the driver's license has been permanently revoked. Driving on a permanently revoked driver's license is a violation of Florida Statute 322.341 which is punishable as a third degree felony. As with all felony criminal traffic charges (such as Leaving the Scene of a Crash with Injury), the defendant must be taken to jail. You cannot release a defendant at the scene with a court date when the defendant is charged with a felony criminal traffic charge.

Victim Information on Arrest Affidavits

In order to accurately build victims into our database, we must have the victim's name, address, phone number(s) and date of birth on the arrest affidavit. We are required to contact the victim soon after the arrest. By making sure to include all of this information on your affidavits, it helps us to fulfill our duties to the victim. Thank you in advance for your cooperation.

Corpus Delicti Rule

It is important that you understand the Corpus Delicti Rule. “Corpus delicti” is a Latin term which means “body of the crime.” We received the rule from English Common Law. In general, the purpose of the rule was to prevent individuals from confessing to a crime which did not occur. In Florida, the rule requires the prosecution to present some evidence as to each element of the crime before the defendant’s confession can be admitted as evidence against the defendant. There need not be separate evidence as to identity before the statement can be admitted. In other words, as long as the prosecution can prove that a crime was committed, the defendant’s confession that he committed the crime can be admitted as evidence.

A good example of where a corpus delicti problem arises involves the charge of dealing in stolen property. In a typical fact pattern the defendant steals property during a burglary and takes the property to a drug dealer where the stolen property is traded for drugs. The defendant is arrested and confesses to burglarizing the home, stealing the property and trading it to the drug dealer. As to the burglary and theft charges, we can establish the elements of those crimes through the victim, so the defendant’s confession can be admitted for those crimes. Since we are not using the drug dealer to establish the charge of dealing in stolen property, we cannot prove that crime outside the defendant’s confession. Therefore, that charge will not be prosecuted.

Another example that might help you understand this concept involves the charges of burglary and theft. The victim leaves his home on Monday and returns on Saturday finding his residence burglarized and property stolen. The defendant gives a statement saying that he went into the house on Tuesday and stole some property. In addition, he states that he went back on Thursday and stole some more property. Do we have two burglaries and thefts or do we have one? The answer is that we

only have one. The only evidence to establish that there were two separate burglaries comes from the statement of the defendant. Absent his statement, we can only establish one burglary and theft.

The purpose of explaining the Corpus Delicti Rule is not necessarily to effect your charging decisions, but rather, to help you understand how this rule prevents us from charging a crime upon which you arrested the defendant. If we cannot establish the elements of the crime outside the defendant’s statement, we cannot file the charge.

Transition to a Paperless System

Our office in Polk County is in the midst of changing to a paperless system. Our Misdemeanor Division is completely paperless. The Felony Division is almost complete. The Juvenile Division will be the next division to make the switch. Our specialized divisions, Child Victim, Homicide, and White Collar, are not going paperless at this time.

As part of this transition to paperless, we are working with individual agencies to set up a procedure to upload the cases to a website. We have started that process for some agencies already. We would

like to complete the transition by the end of the year. If your Polk County agency is not already sending your cases electronically, please contact me at 534-4888 so that we can get your agency on board. We are ready to receive misdemeanor, felony and juvenile cases (except for the specialized divisions) through our website immediately. The only items we do not receive through the upload are pictures, videos and traffic tickets. The pictures and videos take up too much storage space so we are storing them on CD’s. We have to file the original traffic ticket with the clerk so those must still come in paper form.

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

“REMAINING IN” BURGLARY REQUIRES PROOF THAT VICTIM CONSENTED TO DEFENDANT’S ENTRY

The defendant was charged with burglary of a dwelling with assault or battery by remaining in the dwelling with the intent to commit a forcible felony. During his trial, the state did not present any evidence that the victims had consented to the defendant’s entry. However, the trial court denied the defense motion for a judgment of acquittal, and the jury found the defendant guilty as charged. On appeal, the Fifth District reversed, holding that in order for the state to prove a ‘remaining in’ burglary, it must present evidence of the victim’s consent to the defendant’s entry. *Leverett v. State*, 37 FLW D142 (Fla. 5th DCA Jan. 13, 2012).

FACT THAT DEFENDANT NEVER HAD A LICENSE WAS FATAL TO DWLSR CONVICTION

The defendant was charged with driving on a suspended license as a habitual traffic offender in violation of section 322.34(5), Florida Statutes. At his trial, the evidence established that at the time he was caught driving, he had been designated a Habitual Traffic Offender. The evidence also established that he had never had a driver’s license. He was convicted as charged. On appeal, the First District reversed, holding that a person who has never had a driver’s license cannot be convicted under section 322.34(5). *Crain v. State*, 37 FLW D221 (Fla. 1st DCA Jan. 24, 2012).

THEFT ON PLANE BOUND TO FLORIDA BUT NOT YET OVER STATE COULD NOT BE PROSECUTED IN FLORIDA

The defendant was charged with grand theft and filed a motion to dismiss for lack of jurisdiction. The facts on which the motion was based were that while on a plane flight from Arizona to Ft. Lauderdale, the defendant stole \$500.00 from another passenger’s purse. A flight attendant somehow learned of the theft and forced the defendant to give back the money. All these events occurred before the plane entered the airspace over Florida. The trial court denied the motion, and the defendant pled no contest, reserving her right to appeal. On appeal, the Fourth District reversed, holding that since all of the elements of the crime were completed before the plane entered Florida, the trial court lacked jurisdiction. *Sanders v. State*, 37 FLW D225 (Fla. 4th DCA Jan. 25, 2012).

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

witmanagement@sao10.com

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