

CRIMINAL EVIDENCE WORKSHOP
Fall 2015
PROBLEM NO. 1

This article appeared in the Miami Herald:

Police: man stole undercover FBI car

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MIAMI - Police arrested a man they say stole an undercover FBI car from a car dealership while a mechanic was working on it. The unmarked 2010 Chevrolet Impala was taken from the AutoNation garage 4181 SW 8th street at approximately 1:30 p.m. yesterday April 1 according to the Coral Gables police. Detectives say an officer spotted someone driving the stolen car recklessly in the area of LeJuene Rd. and Dixie Highway around 11 p.m.

The officer temporarily lost sight of the car, but spotted it a short time later parked in front of a nearby home. Police said the officer arrested Harold Miller, 48, when he got out of the car. According to a news release, Miller denied stealing the car. Miller is being held at the Dade County Jail on \$4,000 bond, according to jail records.

Background facts:

On April 1, 2015, Timothy Devine, an FBI Special Agent, drove his government issued car to AutoNation for minor repairs. Devine works in the FBI organized crime task force and was investigating the Gotti crime family. His car broke down while being used in an undercover surveillance. Devine left in another agent's car to continue his investigation.

After completing his assignment, Devine returned to the dealership and discovered the car had been stolen. He immediately reported the theft to his superiors and the local police. He told a Coral Gables police officer that numerous items were inside the car, including his handheld FBI radio, and all his case reports relating to the investigation. Two bullet proof vests, a chemical bio-hazard suit, and a gas mask were stored in the trunk.

On April 1, 2015, Roman Rodriguez, a Coral Gables Police officer, was on routine patrol in a marked police car. He spied the Defendant, Harold Miller, driving the stolen car. The officer called the dispatcher on his car radio and gave her the license tag number. Within 30 seconds, she told him the car was stolen and that it was the property of the FBI. She told him the case had a high priority and to proceed with caution because the thief is presumed to be armed and dangerous. The officer immediately turned on his overhead lights and using his loud speaker demanded Miller to stop. He lost sight of the car but later found it with the defendant getting out of it.

The moment the police officer stepped up to the car, Miller demanded to speak with his lawyer because he does not trust the police. He laughs at the officer and said: "What are you going to do -- beat me like the L.A. cops did Rodney King." Rodriguez becomes incensed and hits him on the back of his head causing it to hit the top of the steering wheel and the defendant's nose bleeds profusely. After his release from jail, the defendant files a complaint with the internal affairs division of the police department accusing Rodriguez of excessive force. Miller refused to make any statements. The officer will testify about seeing the FBI logo on the windshield and he found the trunk full of FBI equipment.

There is a passenger in the car. When the officer comes up to the driver's window, he hears the passenger say to Miller: "What do we do now?" The defendant replies "just be cool." The officer asks for permission to search the car, and the passenger

at first says yes, but then looks at the defendant, who shakes his head, and then the passenger withdraws his consent. The officer asks the passenger if the car is stolen and he just shrugs his shoulders. He then blurts out. "You pigs love to harass innocent citizens."

In consultation with his attorney, Miller claims that he did not steal the car, nor did he have any idea that the car was stolen. He tells his lawyer he is an investor and he doesn't have a regular job. He claims that he borrowed the car from the passenger, who he knows only as "Manny." He tells the lawyer that he just got an emergency phone call from his wife saying his son was injured playing football. He ran up to Manny sitting in the car and had him move over to the passenger seat while he jumped in and started driving the car towards home. He says that he knows nothing about Manny. Manny fled before the trial and is not available as a witness.

A grand jury returns an indictment against the Defendant for auto theft, pursuant to Florida Statute § 812.014.

TEAM 1 will prepare the case for the government;

TEAM 2 will prepare a defense for the Defendant.

The government will call only the arresting officer as witness. The FBI agent's testimony is stipulated to be as described above.

The defense shall call only the Defendant as a witness.

All of the lawyers will conduct a short voir dire.

Two lawyers from each team will perform the opening argument and two others the final argument.

Two lawyers will cross examine the arresting officer and two will cross-examine the defendant.

The prosecution shall prepare and introduce into evidence the following:

1. All the statements described above.
2. A photograph of the car which shows an FBI decal prominently displayed on the windshield.
3. The ignition key, which is on a key ring that also holds an FBI medallion.

The defense shall prepare and move into evidence the following pieces of evidence:

1. The police brutality complaint. The defense seeks admission of this document as his state of mind pursuant to FRE 803(3). He wrote out a full detailed statement of the facts in this complaint. If unsuccessful with the state of mind exception, find another basis for admission. The police department sent a letter to Miller denying his complaint.
2. A shirt with blood on it from the assault.

You may prepare and introduce into evidence any other documents or exhibits you wish in addition to those listed above. Opposing counsel shall prepare arguments against the admission into evidence of all these exhibits. In order to intelligently analyze the issues in this trial and be able to perform your job competently, you must be thoroughly familiar with the following rules:

1. FRE 401 and 402. See <http://www.royblack.com/blog/relevance/>.
2. FRE 901, 902 and 902(11).
3. The 800 series on hearsay. Key to understanding the evidentiary issues in this problem is being able to recognize the difference between hearsay and nonhearsay. Read that section of the rule carefully and review this section in Weinstein's Evidence. Both sides must be prepared to fully argue whether these statements are hearsay and whether they are admissible in evidence.
4. Also examine rule 806 to see if it has applicability to this trial.
5. Read the following cases: *Tennessee v. Street*, 471 U.S. 409 (1985); *Shepard v. United States*, 290 U.S. 96 (1933); and *Thomas v. Hubbard*, 273 F.3d 1164 (9th Cir. 2001).

6. Read the hearsay section, rules 801 to 807, in Weinstein's Evidence.