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OFFICE OF THE STATE ATTORNEY TENTH JUDICIAL CIRCUIT

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Early Case Resolution/VOP Division: We are not the "DARK SIDE"

From the Courts

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Fax: (863)-773-0115

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

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

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
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215 N. Floral Avenue
Bartow, FL 33830
Phone: (863)-519-4744
Fax: (863)-519-4759

Early Case Resolution/VOP Division: We are not the "DARK SIDE"

Written by Assistant State Attorney: Don Ratterree

A recent conversation with a local law enforcement officer was quite entertaining. When I disclosed that I worked in the ERP/VOP division of the office, he groaned and said I work for the "Dark Side". Grinning, I assured him I was not a Public Defender, but a loyal member of the law enforcement community. But the response did illustrate how our division is misunderstood by many agencies.

Assistant State Attorney:
Don Ratterree

The Early Resolution/ Violation of Probation division handles felony cases at the beginning and end of a file's life. Our goal is to examine most felony cases at the arraignment stage and determine if an early resolution is appropriate and likely. We try to move as many non-violent felony cases as possible so that both law enforcement and our trial attorneys can concentrate on the most serious cases. The ERP division was able to resolve over three thousand cases last year. That is three thousand cases where officers did not have to appear for depositions, hearings or trials. With that understanding there are several areas where cooperation from officers will make things much easier.

Since a large number of cases dealt with in ERP involve drugs, I will start there. In cases where there are multiple persons in a car or home, it is essential that items of contraband are assigned to the correct person. Often, the drugs are in a center console or bag in the back seat. We need the affidavit to show some type of claim of ownership to help make an offer. Most affidavits do a good job of assigning ownership such as when drugs are found in a purse or book bag and the affidavit indicates who owns the purse or book bag. There are occasions, however, where only a detailed inspection of the reports reveal how the defendant is being connected to the items found. It would be beneficial to have that spelled out in the affidavit.

Also, on drug cases we really do not need to know what the DU (dosage unit, drug unit, etc.) of the item is. What we are looking for is the actual weight of the drugs discovered or how many pills were found, etcetera. Sometimes an officer will list the total package weight of the narcotics. This does not help much since at trial the weight of the packaging is not relevant. Again it would be helpful to have the weight of the drugs spelled out in the affidavit, since we treat residue cases differently than other possession cases.

ERP deals with several victim related crimes. Usually these are theft or burglary related cases. One thing we notice, especially with shoplifting type cases, is that even when the perpetrator is caught at the store, the investigating officer does not bother to try and get a statement from the defendant. Often defendants will confess, which is great for negotiations and trial, or they will have some wild story about why they put the items in their purse, pants and so on. Knowing the defendant's possible defense ahead of trial is an advantage. The story they give at the time of arrest and the one they give in court often changes giving the prosecutor impeachment material. Even if the defendant declines to give a statement, it could be beneficial to have that information at trial if the defendant elects to testify. Please take the extra time and try and get a statement from an arrestee.

In credit card fraud type cases, it is sometimes difficult to find who actually takes the loss based on the defendant's actions. Make sure you get the name of the bank that issued the card, since they are the ones who usually take the loss. We often get cases where defendants try several cards till they find one that will work, so again we need the bank name of the cards since simply writing "Visa" or "Master Card" does not really help. When interviewing the victim in these cases they may already know if the bank or the business is going to take the loss so be sure and inquire about who is out the money.

In burglary cases, determining the amount of loss the victim sustained is very important. Often after a residential burglary, the victim may later discover additional items missing. Be sure to provide the victim with a way to contact you with the additional information. Many times, defense attorneys approach us during plea negotiations and complain that the restitution amount sought is much higher than that listed in the report. A supplemental report describing additional loss usually cures that problem. Determining and agreeing upon a restitution amount is one of the most difficult parts of plea negotiations. Victims seem to think certain items are valuable because they are old or carry sentimental value, which may not be the case. Also, defendants undervalue items based on what they sold it for on the street, which may not reflect the items true value. The law does not allow us to request "replacement" value of an item only the "fair market value". Wolff v State, 981 So2d 651 (4th DCA 2008.) Unfortunately, this may not make the victim whole, but this is how the courts have decided to determine restitution. In many Failure to Redeliver Leased Equipment cases, the victims want replacement value instead of fair market value. Advising a rental business that they will not get $1,500 for a three year old used television will not make them happy, but will help move the case.

In some burglary cases we have noticed a trend where the officer writing the affidavit will use the statement " I have determined" and make the assertion that the defendant is the one who committed the burglary. Common sense tells us that if a burglary occurred at 9:30 that morning and the defendant is pawning items stolen at 11:00 a.m., he is probably the one who committed the burglary. However, common sense conclusions and jury decisions are not the same. It is often necessary to plea the case down substantially unless we have more evidence such as a statement or witness to the actual burglary.

In cases where the officer is the victim we will always send a contact letter to the listed officer. Normally if the officer does not respond to the contact letter we assume there is no loss and the officer is confident that the prosecution will make a reasonable disposition of the case. If you are the victim in a case and want certain conditions added as part of any plea, just call Gary Allen or Don Ratterree at 534-4197, and let us know what you think is appropriate. The Florida Constitution requires that the prosecution look out for the victim's interest and that includes police officers, so let us know what you want. Regardless of the type of case pending, if you have any comment or questions please contact our office.

FROM THE COURTS...

SEARCH AND SEIZURE – DOG SNIFF

The defendant was arrested for possession of cannabis with intent to sell. He filed a motion to suppress, alleging that the dog's alert to his vehicle should be excluded because the dog's reliability could not be established. The trial court denied the motion to suppress, finding that under the totality of the circumstances, law enforcement had a reasonable basis for relying on the dog to support probable cause. On appeal, the First District affirmed the trial court's decision and applied the U. S. Supreme Court's recent decision in Florida v. Harris, 133 S. Ct. 1050. The court cited the supreme court's standard of determining whether there was probable cause for a warrantless search of a vehicle based on a drug-detection dog if '"[a] sniff is up to snuff" when "all the facts surrounding a dog's alert, viewed through the lens of common sense, would make a reasonably prudent person think that a search would reveal contraband or evidence of a crime." Bennett v. State, 38 FLW D997b (Fla. 1st DCA May 6, 2013).

SEARCH AND SEIZURE – ILLEGAL DETENTION

An officer was alerted to the defendant slumped over a steering wheel of a van in a driveway of a residence. Both vehicle doors were open. The officer determined that the defendant was fine, but instructed him to stand-by. The officer knocked on the front door of the residence where the defendant's ex-wife lived. She was the owner of the van. The defendant was then searched by the officer. Eight oxycodone pills were found on the defendant. At the motion to suppress hearing, the officer testified that he believed he had probable cause to arrest the defendant for trespass of a conveyance. Additionally, the officer testified that the defendant consented to the search by lifting his arms several inches. The ex-wife testified that she did not care that the defendant was in her van. The trial court denied the motion to suppress. On appeal, the Second District reversed, holding that the officer illegally detained the defendant before he gave any consent to search. Consent given after illegal police activity is presumptively tainted and rendered involuntary. (citing Norman v. State, 379 So. 2d 643). Neeley v. State, 38 FLW D1060a (Fla. 2nd DCA May 15, 2013).

SEARCH AND SEIZURE – CONSENT -- DETENTION

A deputy observed the defendant walking along a road at midnight. The defendant was walking ten to fifteen feet away from the road to avoid what she called "crazy drivers." The deputy pulled his car in the defendant's path and asked to see her identification. The defendant consented and a computer search revealed no active warrants. The deputy then (while still holding the defendant's identification and without telling the defendant she was free to leave) asked the defendant for and received consent to search. Two carisoprodol pills were found in the defendant's pocket. The defendant filed a motion to suppress the evidence, arguing that the deputy's failure to return her driver's license after the warrant check converted the consensual encounter into a detention. The trial court denied the motion to suppress. On appeal, the Second District reversed, holding that under the totality of the circumstances, the deputy's request to search the defendant while still holding her driver's license outweighs the fact that the defendant initially voluntarily spoke with the deputy and consented to the warrants check. A reasonable person would not have felt that she was free to leave and she was therefore detained as a matter of law. Horne v. State, 38 FLW D1155a (Fla. 2nd DCA May 24, 2013).

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 Fax	534-4021
	534-4034

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

witmanagement@sao10.com

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