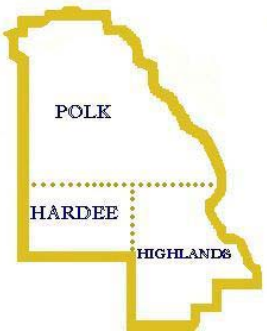
OFFICE OF THE STATE ATTORNEY
TENTH JUDICIAL CIRCUIT

Legal Advisor



Volume 17, Issue 7 July 2003

JERRY HILL
STATE ATTORNEY

POLK COUNTY COURTHOUSE
255 NORTH BROADWAY
2ND FLOOR
BARTOW, FL 33830

IMPORTANT BARTOW TELEPHONE NUMBERS:

Switchboard	534-4800
Misdemeanor Intake	534-4928
Misdemeanor	534-4926
Domestic Violence	534-4986
Victim Assistance	534-4989
Felony Intake	534-4987
Felony	534-4942
Investigations	534-4804
Violation of Probation	534-4870
Child Abuse/Neglect	534-4857
Homicide Division	534-4959
On Call Pager	819-1526
Worthless Checks	534-4879
Juvenile Division	534-4905
FAX	534-4945

WITNESS MANAGEMENT:

Misdemeanor/Traffic	534-4021
Felony	534-4020

KNOW THE SOURCE OF THE INFORMATION SUPPLIED IN A BOLO

by Mike Cusick

The development of case law in recent years makes it important that the investigating officer know the source of the information supplied in a BOLO before stopping someone based on that BOLO. In 2000, the United States Supreme Court, decided *Florida v. J.L., 529 U.S. 266, 146 L. Ed. 254, 120 S. Ct. 1375 (2000)*. In that case, the Supreme Court held that an anonymous tip without corroboration cannot be the basis for *Terry* stop. The Court found that an uncorroborated anonymous tip lacks reliability.

The holding in *Florida v. J.L.* was followed and expanded by the Second District Court of Appeals in *Young v. State, 841 So. 2d 689 (2003)*, a case from Polk County. In *Young* a Polk County deputy stopped the defendant because he matched the description given in a BOLO that had been transmitted regarding a disturbance involving a man armed with a gun. He searched the defendant for the gun and found a controlled substance. It turned out that the BOLO was based on an anonymous telephone tip. The Court ruled that the deputy lacked a basis to stop the defendant.

At the conclusion of the case, the court noted:

> "We would emphasize that we do not fault the deputy for his actions in this case. There is nothing in the record to suggest that the deputy realized, at the time of these events, that the dispatch information had come from an anonymous tipster. He may have assumed that the information was obtained from a reliable citizen informant. In order to comply with the dictates of *J.L.*, law enforcement agencies may need to modify the procedures they use to dispatch officers and issue BOLOs so that patrol officers know the nature of the source of information received by the dispatcher."

The *Young* case places the burden on the investigating officer to know the basis for the BOLO before a stop is made. As a result, the officer will need to inquire from the dispatcher the source of the BOLO information. If the BOLO is based upon an anonymous tip, the officer will need to corroborate the tip before stopping the suspect or attempt to create a consensual encounter without a show of authority.

Mike Cusick is the Felony Intake Director at the State Attorney's Office. He has been with the office since March 1985.

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WARRANTLESS SEARCHES OF PROBATIONERS

by Mike Cusick

The United States Supreme Court case of *U.S. v. Knights, 534 U.S. 112, 151 L. Ed. 497, 122 S. Ct. 587 (2001)* upheld a search by a law enforcement officer conducted pursuant to a warrantless search condition in a probation order. In the *Knights* case, the probation order (from California) permitted warrantless searches by probation officers and law enforcement officers. The Supreme Court ruled that evidence seized as the result of a warrantless search by a law enforcement officer, pursuant to warrantless search clause in a probation order, may be used in a new law violation. It is important to note that the Court upheld the search because the officers had reasonable grounds to believe contraband was present. The Court did not authorize warrantless searches based upon a hunch or on the defendant's prior record.

Prior to *Knights*, the Florida Supreme Court had held that evidence obtained as the result of a warrantless search by a probation officer could not be used in a new law violation. While the Florida Supreme Court has yet to address the holding in *Knights*, the Florida Constitution requires that our state courts follow the United States Supreme Court rulings with regard to search and seizure case law.

As of this month in the Tenth Judicial Circuit new probation orders are being used which contain a warrantless search condition authorizing warrantless searches by probation officers and law enforcement officers. It will take some time until the new probation order covers the majority of those individuals on probation. You will need to check with the probation officer to determine whether or not your suspect's probation order provides for warrantless searches by a law enforcement officer. While the clause is on the order, it can be eliminated if a judge chooses not to include that condition in the defendant's probation order.

If the defendant's probation order permits you to conduct a search, please remember that you still need to have information which amounts to a reasonable suspicion that there is contraband present. Document the source of the information and any efforts you make to corroborate that information. When you make contact with the suspect, first attempt to obtain the suspect's consent for the search. Proceed with a nonconsensual warrantless search pursuant to the order only after the probationer has refused to consent to the search. Inform the probationer that you are conducting the warrantless search pursuant to the condition in the probation order. Any contraband obtained can be used to violate the defendant's probation as well as for the new law violation. Please do not abuse this new basis for conducting searches. If it is abused, courts will be quick to look for ways to eliminate or restrict this type of search.

ANGELA COWDEN APPOINTED BY GOVERNOR

For the third time in less than two years, Governor Bush has chosen a Tenth Circuit Assistant State Attorney to serve as a judge. With her appointment, Angela Cowden joins former prosecutors Keith Spoto (Polk) and Pete Estrada (Highlands) on the county bench.

Angela has served as a prosecutor for more than nine years. Her assignments have included county court, felony, child sexual abuse, and, most recently, economic and environmental crime.

Angela will move into her new position on August 18 with her formal investiture taking place sometime in September.

...FROM THE COURTS...

OFFICER COULD NOT DETAIN DEFENDANT AFTER REASON FOR DETENTION DISAPPEARED

In this Polk County case, the defendant was charged with possession of controlled substances and paraphernalia, giving false information, and no valid driver's license and filed a motion to suppress. The facts on which the motion was based were that an officer stopped the defendant's vehicle about 1:00 a.m. one morning because he could not see a tag on the car. As he approached the car, he saw a temporary tag displayed in the back window. After seeing the tag, he made contact with the defendant, and that contact led to the charges against the defendant. The trial court denied the motion to suppress, and the defendant was convicted as charged. On appeal, the Second District reversed, holding that the officer had no right to detain the defendant further after he saw the tag. *Blackwelder v. State*, 28 FLW D1583 (Fla. 2d DCA July 11, 2003).

OFFICER'S OBSERVATION OF VICTIM MADE HIS ACCOUNT OF HER STORY ADMISSIBLE

The defendant was charged with attempted kidnapping. At his trial, the victim testified that as she was walking near her home, the defendant grabbed her and attempted to force her into a van at gun point. She broke away and ran into traffic to escape. The defendant stood on the sidewalk and threatened to shoot her. She returned to her home and called police. The police officer testified that when he arrived at the victim's home, she was hysterical and that it took him fifteen or twenty minutes to calm her down enough to get her statement. Over defense objection, he then testified as to her account of the incident. The evidence established that about fifty minutes elapsed between the incident and the victim's statement to police. The defendant was convicted as charged. On appeal, the Third District affirmed, holding that given the victim's condition when the police officer contacted her, the passage of time did not prevent the victim's statement to the officer from being an excited utterance. *Bell v. State*, 28 FLW D1365 (Fla. 3d DCA June 11, 2003).

BEER BOTTLE CAN BE A DEADLY WEAPON

The defendant was charged with aggravated assault with a deadly weapon. At his trial, the evidence established that he hit the victim in the head with a beer bottle causing her to lose consciousness and develop a large bump on her head. He was convicted as charged. On appeal, he argued that he was not guilty of aggravated assault because the beer bottle was not a deadly weapon. The Fourth District rejected this argument and affirmed, holding that a deadly weapon is any instrument likely to cause great bodily harm by the way it is used. *Cloninger v. State*, 28 FLW D1289 (Fla. 4th DCA May 28, 2003).

Pictured on the right (from left to right) are Brenda Edenfield, Brian Moore and Director Becky DeVenny of the State Attorney's Office, Computer Services Division.

LEO NEWS...

Congratulations to Morris West of the Haines City Police Department on his recent appointment to Chief of Police. West officially took over the job on Friday, August 1st. The official promotion ceremony will be held on Tuesday, August 5th at 10:00 a.m. at the Police Department.

Congratulations to the following members of PCSO on their recent promotions:

- Lt. K Andy Ray promoted to the rank of Captain
- Sgt. Lawrence Cavallaro promoted to the rank of Lieutenant.
- Sgt. C. Wayne Lott promoted to the rank of Lieutenant.
- Sgt. Robert Oakman promoted to the rank of Lieutenant.
- D/S Alan Cloud promoted to the rank of Sergeant.
- D/S John Conover promoted to the rank of Sergeant.
- D/S Christen Cross promoted to the rank of Sergeant.
- D/S Thomas Dombroski promoted to the rank of Sergeant.

Winter Haven Police Department's new 33,000 square foot headquarters is officially completed. The Grand Opening and Ribbon Cutting Ceremonies were held on Saturday, July 26th from 10:00 to 1:00 p.m. The new department is located at the following address:

125 N. Lake Silver Drive, NW
Winter Haven, FL 33881

(863) 291-5858

Welcome to your new home!

HARDEE COUNTY
124 SOUTH 9TH AVENUE
WAUCHULA, FL 33873
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 33830
PHONE: (863) 519-4749
FAX: (863) 519-4759

LAKELAND BRANCH OFFICE
930 E. PARKER STREET
SUITE 238
LAKELAND, FL 33801
PHONE: (863) 499-2596
FAX: (863) 499-2650

WINTER HAVEN OFFICE
GILL JONES PLAZA
3425 LAKE ALFRED RD. 9
WINTER HAVEN, FL 33881
PHONE: (863) 401-2477
FAX: (863) 401-2483

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For comments or suggestions, contact us at the above e-mail addresses.

The "Legal Advisor" is published by:
Office of the State Attorney
Tenth Judicial Circuit

...FROM THE COURTS...

COMMINGLING OF DRUGS RESULTS IN REVERSAL

In this Polk County Case, the defendant was charged with Trafficking in Methamphetamine. Two baggies of what the defendant acknowledged was methamphetamine were seized from the defendant following a traffic stop on January 19, 2001. The contents of baggie number one were mixed with the contents of baggie number two. The total weight then exceeded fourteen grams, a trafficking amount for which he was convicted. On appeal, the defendant's trafficking conviction was reduced to simple possession because law enforcement commingled the contents of the two baggies, neither of which could be proven to weigh more than fourteen grams by itself, in spite of the defendant's statements. *Sheridan v. State* (Fla. 2d DCA July 25, 2003).

POLICE INSIGNIA STATUTE DECLARED UNCONSTITUTIONAL

The defendant was charged (among other crimes) with Unlawful Display of Authorized Indicia of Law Enforcement Authority pursuant to section 843.085 (1), Florida Statutes, following a high speed chase wherein the defendant attempted to convince law enforcement to discontinue the chase by pointing to the black shirt he was wearing with the word "POLICE" on the front and back while mouthing the word "police." The Third District Court of Appeal vacated the defendant's conviction on this count finding that section 843.085 (1), Florida Statutes, was unconstitutionally "content based" and that it was an over broad violation of the right to free speech in both the Florida and U.S. Constitutions because the statute criminalized merely wearing or displaying insignia without requiring proof that the offender thereby intended to deceive someone. *Rodriguez v. State* (Fla. 3rd DCA July 23, 2003).

I'd like to take a moment to recognize **DETECTIVE CARIN KETCHAM** of the Auburndale Police Department. Detective Ketcham was assigned to an 11th hour Attempted Murder Case right before the arraignment date. Detective Ketcham called two to three times per week to bring me up to speed on the status of the investigation. Because of her dedication and hard work, Detective Ketcham completed her investigation in a timely manner. Thank you detective for all your hard work.

Wade Warren, Assistant State Attorney, Felony Intake

I'd like to take a moment to recognize **OFFICER BRIAN DORMAN**, of the Bartow Police Department. Officer Dorman was an outstanding witness for a DUI jury trial I had this past month. He performed the Field Sobriety Exercises for the jury and spoke to the jury in plain language. He answered each question he was asked on direct examination so vividly, it allowed jurors to see what occurred. He was confident and straight forward on cross examination as well. Simply put, he was an awesome witness.

Aramis Donnell-Malveaux, Assistant State Attorney, Felony Division 5