



Legal Advisor

Volume 17, Issue 6

June 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

CONFESSIONS CAN MAKE THE CASE

By Pete Sternlicht

Often in prosecuting felony cases the only proof against the defendant is the defendant's confession to a member of law enforcement. This means there are no eye-witnesses to the crime. There is no physical evidence to connect the defendant to the crime, such as possession of recently stolen property or fingerprints. The defendant's confession to law enforcement may be the sole piece of incriminating evidence.

Confessions to law enforcement may be oral, tape recorded and to a lesser extent written or videotaped. A recorded confession is the preferable type of confession for several reasons.

It is an unfortunate fact that juries do not have as much faith in the credibility of law enforcement as in years past. Law enforcement has been the subject of bad publicity in the news media which contributes to this credibility problem. Another reason is the change in the makeup of the jury panels. Until fairly recently, the jury pool consisted of registered voters. The jury pool was expanded several years ago to include anyone with a driver's license.

Unfortunately this has had the effect of seating more jurors who have had problems with law enforcement and may be prejudiced against the credibility of law enforcement. This office runs a computer check on the jury list for each week that criminal trials are scheduled. While convicted felons are not allowed to serve on juries, jurors convicted of misdemeanors can serve. Often we see jurors who have been either convicted of misdemeanors or may have originally been charged with a felony even though the juror was not ultimately convicted of a felony. This type of juror, all too often, will align himself or herself with the defendant rather than with law enforcement. A story by the defendant denying that he or she orally confessed to the officer is more likely to be accepted by a jury today than in years past.

It is important to get the defendant's confession taped if at all possible. This may pose more of a problem for members of the uniform patrol division who may not carry a tape recorder as a matter of course. Please keep in mind that you do not have to inform the defendant that you

are tape recording the conversation (as some defendants will agree to oral statements but will not allow the statement to be recorded). Placing a defendant in the back seat of a patrol car (or in an interview room) giving the defendant the Miranda warning and subsequently questioning the defendant about the crime without stating that the conversation is being recorded does not violate the defendant's rights. If the defendant is cooperative and is willing to give a taped statement this procedure is not necessary. Please keep in mind that where the statement cannot be recorded, having two officers present for an oral confession is preferable.

...Continued on Page 2...

INSIDE THIS ISSUE

Inside Story	2
SAO Birthdays	2
From the Courts	2
From the Courts	3
Top Cops	3
LEO News	3
More Top Cops	4

CONTINUED FROM PAGE 1

CONFESSIONS CAN MAKE THE CASE**STATE ATTORNEY'S****OFFICE BIRTHDAYS****JULY 2003****1st:**

Kevin Kohl
 Felony Division 1
 Kathy Cotterill
 Misdemeanor Intake
 Kyndal Copley
 OPS, Child Support Enf.

4th:

Caroline Johnson
 Felony Division 4

8th:

Monica Massey
 Misdemeanor

10th:

Gary Rice, Scoresheets

18th:

Amy Tolley
 Felony Division 4

20th:

Mary-Ann Hendry
 Front Desk

21st:

Christine Johnson
 Highlands County Office

22nd:

Larry Updike
 Felony Division 1

23rd:

Staci Flanery
 OPS, Felony Intake

26th:

Stacey McNelis
 Winter Haven Office



Pete Sternlicht is an Assistant State Attorney and the division chief of Felony Division 3. He has been with the office since December 1980.

Videotaped confessions are also an excellent way to present a defendant's statement to a jury. We recognize this is not as easily

obtainable. It should be done wherever practicable on serious cases. Even a handwritten confession by the defendant is preferable to an oral confession.

Even if the defendant does not confess to committing the crime, it is important to know the defendant's version of what happened. It may limit the defendant's defenses later. Through other evidence, you

may be able to establish that the defendant's version of the events could not have occurred, is contradicted by other known facts, or at the very least doesn't make sense.

In summary, it is important to question defendants regarding their knowledge of crimes with the hope of determining what actually happened and what, if any, role the defendant played in the crime. As stated above a taped statement confession is the preferred method of obtaining this piece of evidence.

...FROM THE COURTS...**MEDICAL EMERGENCY JUSTIFIED SEIZURE**

The defendant was charged with possession of cocaine and tampering with evidence and filed a motion to suppress. The facts on which the motion was based were that during a traffic stop, an officer saw the defendant put a seven inch square plastic bag containing a white substance in his mouth and begin to chew. The defendant swallowed

the bag. The officer tried unsuccessfully to stop the defendant and then out of concern that the defendant might die from ingestion of cocaine rushed him to a hospital. There the defendant refused treatment, but doctors treated him anyway after the officer signed a Baker Act form. The treatment resulted in the defendant vomiting up the bag.

Doctors testified that the treatment was medically necessary and minimally intrusive. The trial court denied the motion, and the defendant was convicted as charged. On appeal, the First District affirmed, holding that the warrantless retrieval of the bag was justified by exigent circumstances. *Hendrix v. State*, 28 FLW D1080 (Fla. 1st DCA May 1, 2003).

DETENTION MUST END WHEN REASON FOR IT ENDS

The defendant was charged with felony driving on a suspended license and filed a motion to suppress. The facts on which the motion was based were that when an officer could not read a temporary tag in the back window of the defendant's car, he initiated a

traffic stop. Approaching the car, he was able to read the tag and found it to be proper. Nonetheless, he proceeded to talk to the defendant and obtain information which led him to determine that the defendant's license was suspended. The trial court de-

denied the motion, and the defendant was convicted as charged. On appeal, the Supreme Court reversed, holding that once the officer determined that the temporary tag was legal, he had no further right to detain the defendant. *State v. Diaz*, 28 FLW S397 (Fla. May 15, 2003).

...FROM THE COURTS...

FAILURE TO RETURN CHARGE WAS PROPERLY FILED IN FLORIDA

The defendant was charged with failure to return a hired vehicle and filed a motion to dismiss asserting that the court did not have jurisdiction and that venue was improper. The facts on which the motion was based were that the defendant rented a car in Atlanta from a company which did not have a Florida office. The rental agree-

ment provided that the car was to be returned in Atlanta the next day. However, the defendant did not return the car but drove it to Broward County. After some time, the company reported the car as stolen. Ultimately, the car was located at the defendant's mother's residence in Broward County. The trial court denied the motion,

and the defendant was convicted as charged. On appeal, the Fourth District affirmed., holding that the court had jurisdiction and that venue was proper because the defendant had the intent not to return the vehicle while she was in Broward County. *Levine v. State*, 28 FLW D1203 (Fla. 3dDCA May 14, 2003).

VICTIM'S DEATH FROM HEART ATTACK WAS MANSLAUGHTER

The defendant was charged with first degree murder, burglary, and grand theft. He pled no contest to the burglary but went to trial on the other charges. The evidence established that as the defendant broke into the victim's house, the victim collapsed. The defendant took the victim's car

keys and money and drove off in search of cocaine. After he obtained some, he returned the victim's car and unsuccessfully tried to revive her. Two doctors testified that the victim died of arrhythmia related to a pre-existing heart disease brought on by the stress of being surprised by the de-

fendant. The defendant was convicted of manslaughter and grand theft. On appeal, the First District affirmed, holding that the state provided sufficient evidence of causation to justify the manslaughter conviction. *Tyus v. State*, 28 FLW D1273 (Fla. 1st DCA May 20, 2003).

TOP COPS

On August 19, 2001, during a routine traffic stop, **DEPUTY CLAY NICHOLSON OF THE HARDEE COUNTY SHERIFF'S OFFICE** almost lost his life. After giving the deputy several false names, the suspect ran from the scene and a brief foot pursuit ensued. Deputy Nicholson quickly caught up with her, and they struggled and fell to the ground. While on the ground, the suspect

took the officer's weapon from his holster, pointed it at the officer's head and attempted to pull the trigger. Deputy Nicholson acted quickly and managed to push the slide back and disengage the trigger to his weapon. Shortly there after he took the suspect into custody.

Through out the time prior to trial, Deputy Nicholson kept his composure, was very professional, always made himself available to this office and never balked at coming in when

asked to do so. It has always been my belief that cooperation from law enforcement is essential for the successful prosecution of all cases.

The trial lasted four days, and the jury deliberated for a day and a half. In the end, the suspect was found guilty of Attempted Manslaughter on a LEO w/Firearm, Battery on LEO, Unlawful taking of a LEO's Firearm and Giving False ID to Law Enforcement.

Gary Ellis
Assistant State Attorney

LEO

NEWS...

Lt. Kathy Mangett-Goddard of the Winter Haven Police Department retired March 21, 2003 after 30 years of law enforcement service. Thank you for all your years of service.

Trooper Frank Yodonis of the Florida Highway Patrol will be retiring on June 30, 2003 after more than 31 years of law enforcement service. His last day was June 26. Thank you Frank for all your years of service. We will truly miss you.

Best wishes to you both on your retirement and thank you for all your hard work and dedication to the citizens of the Tenth Judicial Circuit.



Mary Reckeweg, better known to all as Felony Mary, will be retiring this month after almost 50 years with the State Attorney's Office. It is a record unequaled in the office's memory, and we are delighted that she has agreed to volunteer with us on a part-time basis.

Generations of young lawyers and officers have benefited from Mary's experience and commitment to the criminal justice system. Her ready smile and quick wit have often served to relieve the jitters of those about to experience a courtroom for the first time. Known for being the first to arrive and the last to leave, she has long served as an inspiration to us all.

Best wishes, Mary, for a wonderful retirement!



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

LEGAL ADVISOR STAFF

Jerry Hill, Publisher
jhill@sao10.com

Chip Thullbery, Managing Editor
cthullbery@sao10.com

Michael Cusick, Content Editor
mcusick@sao10.com

Lorena Diaz, Graphic Design
ldiaz@sao10.com

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

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

HARDEE, HIGHLANDS AND POLK COUNTIES

TOP COPS

While in the Domestic Violence Division, I was the assigned assistant state attorney in a case involving **OFFICER MICHAEL TOWNSEND OF THE LAKELAND POLICE DEPARTMENT**. The defense filed a motion to suppress and a hearing was set. Because of a mix up in this office, a subpoena was never issued for Officer Townsend to appear in court and I was not aware of this error until the day before the hearing. I immediately called the Lakeland Police Department and left a message for and then paged the officer. He called me at home that night, and although we hadn't issued a subpoena, he agreed to show up the next morning for the hearing. Even though the defendant pled, the officer stood by until the plea was accepted by the court. Officer Townsend was very articulate, well prepared and showed that he truly cared about his case. It is my belief that his presence had a lot to do with the defendant taking the offer. Officer Michael Townsend, we appreciate you going above and beyond for the state!

by Aramis Donell-Malveaux, Misdemeanor Division

I'd like to take a moment to recognize a few outstanding officers who have continuously been very helpful and have gone above and beyond to get the job done.

DEPUTY IAN FLOYD OF THE POLK COUNTY SHERIFF'S OFFICE. I have been the assigned state attorney on several drug cases where Deputy Floyd is the case filing agent. His cases have always been top-notch. He presents himself well in court and is right on top of the facts in every case.

SGT. HANS LEHMAN OF THE LAKELAND POLICE DEPARTMENT, CORPORAL MIKE GREEN OF THE HAINES CITY POLICE DEPARTMENT, DEPUTY TOM BREWIN AND DEPUTY JOHNNY WOMBLES OF THE POLK COUNTY SHERIFF'S OFFICE have all been instrumental in making DUI cases for me in the past. When I see their names on DUI cases, I know I've got a good case on my hands. Prior to moving to the Felony Division, I was in the Misdemeanor Division. I never lost a DUI trial in which these officers were involved.

OFFICER TIFFANY POWELL OF THE LAKE WALES POLICE DEPARTMENT went over and above the call of duty when investigating two drug cases near a school recently. Officer Powell went to the drug transaction site and obtained pictures of where the drug transaction occurred. The photos showed the distance to the school, and even included a school bus in the shot. It was obvious to everyone that the drug transaction occurred within 1000 feet of a school. When confronted with the evidence, the defendant pled in both cases to the mandatory the State was seeking.

In like measure, **DETECTIVE CARRIE POWERS OF THE POLK COUNTY SHERIFF'S OFFICE** helped me make a theft case just last week. Like in the case above, she was instrumental in assembling so much overwhelming evidence, that the defendant pled at docketing rather than risk a trial.

LT. ART TREVINO OF THE WINTER HAVEN POLICE DEPARTMENT was very helpful on a case at the beginning of this trial block. He stepped in when the lead detective was unavailable because of a family emergency. He helped me sort through a mountain of evidence and prepare a case the State wanted to try. He also helped fight a last-ditch attempt to claim incompetence on the defendant's part when he witnessed the defendant's in-court behavior. The State lost that fight, but he helped me put up a good one.

DEPUTY THERESA EDMISTON OF THE POLK COUNTY SHERIFF'S OFFICE was very helpful on a case recently. Deputy Edmiston came to testify on a substantial assistance plea deal that went south. Thanks to her willingness to come in on her own time, we were in the driver's seat and were able to put good evidence before the court in our bid to increase the defendant's sentence.

Thank you all for your dedication and hard work.

by Assistant State Attorney Victoria Avalon, Felony Division 5