OFFICE OF THE STATE ATTORNEY
TENTH JUDICIAL CIRCUIT

Legal Advisor

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JERRY HILL
STATE ATTORNEY

As we enter the holiday season, let me take a moment to once again thank you for your service to the people of the Tenth Judicial Circuit. May you have a blessed Christmas and a safe and prosperous New Year.

Sincerely,

IMPORTANT BARTOW PHONE NUMBERS:

Switchboard	534-4800
Misdemeanor Intake	534-4928
Misdemeanor	534-4926
Domestic Violence	534-4986
Victim Assistance	534-4989
Felony Intake	534-4987
Felony	534-4964
Investigations	534-4804
Violation of Probation	534-4803
Child Abuse/Neglect	534-4857
Homicide Division	534-4959
On Call Pager	819-1526
Worthless Checks	534-4874
Juvenile Division	534-4905
FAX	534-4945
WITNESS MANAGEMENT:	
Misdemeanor/Traffic	534-4021
Felony	534-4020

INSIDE THIS ISSUE:

Making Your Case

by Vince Patrucco

"It's not what you know. It's what you can prove."

– Detective Alonzo Harris (Denzel Washington, "Training Day")

They gave Denzel an Oscar for his performance as the ruthless Detective Alonzo Harris in the movie "Training Day." He also deserves a "Legal Realism" award for the quoted statement. Most of what matters in the courts of criminal justice is whether the evidence that can be brought forth at trial is sufficient to prove the case. For that reason, it is essential that those cases where we "know" the defendant is guilty, but cannot prove it, are weeded out early in the process. For most felony matters that arise, the evaluation of the merits of the cases is the task of the Felony Intake Division of the State Attorney's Office.

Vince Patrucco is an Assistant State Attorney in the Felony Intake Division. He has been with the State Attorney's Office since June 1994.

It is generally true that the decision to file or not in a felony arrest case must be made under fairly tight time constraints. Speedy trial limitations under the Florida Rules of Criminal Procedure are only one factor. It is also necessary to complete the evaluation of a case in time for arraignment, which generally follows arrest by, at most, a few weeks. Finally, there are certain cases in which the defendant remains incarcerated after arrest. In those cases, the charges must be formally filed by way of an Information within twenty-one days of arrest. If charges are not timely filed, and the defendant seeks release from jail, one of two things must occur: Either the state must bring witnesses to a formal court hearing, known as an Adversary Preliminary Hearing, to establish probable cause or the defendant must be released on his own recognizance pending final resolution of the case. Once the twenty-one days have passed, the filing of an Information does not affect the defendant's entitlement to the Adversary Preliminary Hearing.

It is the policy of the State Attorney's Office not to request preliminary hearings in most cases where felony packets arrive late. The exceptions to the general rule occur where there is danger to the public or to individuals from the mandatory recognizance release of a defendant.

It is always preferable to have the completed felony investigative packet in the hands of the Intake prosecutor within the first two weeks after arrest. In that way, the case has the best chance of a correct and timely evaluation, and many problems are avoided. Assuming diligent and conscientious work habits, attention to detail is one of the keys to efficient investigation that helps avoid the necessity of deferring the filing decision on a case pending receipt of additional investigative materials.

It should be mentioned at this point that delays are sometimes unavoidable, despite the best efforts of the investigative agency. That is understood. The objective here is to offer a few suggestions and reminders that will keep such delays to a minimum.

Every criminal case involves a "wrong" of some kind, whether it is an action that harms people or their property directly, or whether it involves matters that our society, through its lawmakers, has declared unlawful. To prove a criminal wrong in court, it is

State Attorney's Office
Holiday Closings
Thursday, December 25th
Friday, December 26th
Thursday, January 1st

MAKING YOUR CASE

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always necessary to establish the identity of a perpetrator, and that all of the elements of each crime charged have been proven beyond a reasonable doubt. In the initial evaluation of every case, the Intake prosecutor must assume that what is in the felony packet is all of the evidence that will be available to the trial prosecutor as the latter considers how to handle the case and whether there is a substantial likelihood of success at trial. As previously mentioned, the decision of whether to start the process toward a possible trial must be made by the Intake prosecutor early on, and based primarily on the contents of the felony packet.

Moving from the general to the particular, let us consider a few examples of the kinds of details that can be omitted or overlooked, causing needless delay, or even the dismissal or reduction to misdemeanor prosecution of some cases:

Cases involving harm of some kind to a victim's property always involve quantitative questions. That is, how much money is involved in the loss? It may seem an obvious aspect of property damage or theft investigations, but verification of the amount of the loss, and the basis for the proof of it, are sometimes overlooked. It is always necessary to have proof of the amounts of monetary loss, either in the victim's sworn statement, or, where appropriate, in a sworn non-eyewitness affidavit. It is essential to a correct evaluation of proof to know whether minimum jurisdictional amounts can be established where theft, fraud, criminal mischief, arson or many other crimes that may involve monetary loss to a victim are charged. The officers who respond to original incidents and the detectives who complete the investigations of crimes of <u>any</u> kind should always ask themselves whether a monetary loss has occurred. If so, then the problem of measuring the loss must be solved. Even if the source of the loss is not an essential element of proving an offense, the amount of loss attributable to criminal activity is something that is often addressed in plea negotiations. Where the loss is attributable to commission of a particular crime charged, the court is required by law to resolve the issue of restitution in the form of a restitution order. Having that information early can be important to the efficient resolution of some cases at any stage of their prosecution. Confronting the defense with reasonable proof of restitution, and the basis for it, will often result in a reasonable stipulation between the parties as to the amount. That way, lengthy and expensive restitution hearings can be avoided.

Also, it is practical to keep in mind that, although the primary offense charged may not require proof of a particular amount, its lesser included offense may. For example, if a robbery entailed taking property of a value of $300.00 or more, that fact should be securely established in the investigation. In that way, should the proof fail to convince the jury of the other elements of robbery, grand theft will be available as a lesser included offense. The writer is aware of at least one trial where the jury "pardoned" a defendant on a robbery charge, but returned a guilty verdict for grand theft. Since the defendant's criminal

<u>S.A.O.</u>
<u>EMPLOYEE BIRTHDAYS</u>
<u>DECEMBER 2003</u>

<u>3rd</u>
Don Ratterree, VOPS
Don Pell, Investigations

<u>4th</u>
Torie Avalon, Felony 5

<u>7th</u>
Rebecca Wiggins,
Felony 2

<u>8th</u>
Rebecca DeVenny,
Computer Services
Maria Jimenez,
Domestic Violence

<u>9th</u>
Jane Bayless,
Highlands County

<u>11th</u>
Bill Ouellette, Felony 1
Brian Moore,
Computer Services

<u>12th</u>
Molly Dupree, Felony 5
Kevin Balentine,
Special Prosecution

<u>13th</u>
Tammy Glotfelty, Juvenile

Happy Birthday!

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history was extensive, the prosecutor in the case was able to secure a lengthy prison sentence because of the felony conviction. If the value of the stolen property had not been alleged in the information, the only lesser crime would have been petit theft. If the proof were not in place in the original investigation, the amount would probably not have been alleged. Alert attention to detail matters.

Careful review during the follow-up investigation of the reports submitted by the officers, who were actually at the scene of a crime in the early investigative stage, is critical to extracting the best investigative product from later sworn interviews of witnesses. It is important to remember that, although the officer's report is sworn, the accounts given to him by witnesses at the scene are usually not. Everything useful that a witness had to say at the scene should be drawn out of that witness in the course of taking a sworn taped statement from that witness later. (In some agencies with fewer personnel, the original responding officer may also be the investigating officer who completes the case. In that dual role, the officer is reminded to be sure that his material witnesses cover their knowledge of the case fully in their sworn taped statements, since it is to the sworn statement that we must look for the proof to support filing a felony.) Frequently the stirring account of a criminal event provided at the scene by an excited or interested witness becomes less compelling or probative when given later, under oath and after passions have cooled or the influence of alcohol (or whatever) has subsided. It is, after all, in the cold and dispassionate light of day in which witnesses will later be deposed, and perhaps called to the witness stand in a trial.

Ideally, those police officers who become of investigators or detectives have certain special qualities that aid them in their work. It would be helpful to the investigator, to have the ability to visualize the presentation of the proof in court, since the evidence gathered in the investigation will be subjected to critical and skeptical scrutiny. In an adversarial system of justice, as practiced in American courts, the evidence should and will be challenged. Good preparation at every stage allows us to meet the challenge.

When preparing a case for submission to the State Attorney's Office for filing, keep in mind that evidence is brought forward in court in a manner that is tightly controlled by rules, statutes and case law. It is a kind of closed system where stray facts, unprovable allegations and interesting, but irrelevant, background information have no place. No material facts can be assumed. All must be proven.

Sometimes the detail, which must be accounted for in the available proof, seems obvious, but is overlooked from time to time, for example, was an alleged victim actually placed in fear by the behavior of a defendant in an aggravated assault case? More than once, alleged victims of assault have appeared at deposition or even trial, and denied that the defendant's actions caused them any apprehension. That usually results from the unwarranted assumption that the alleged victim understands the elements of the charge. If the assault victim understood the element of being placed in fear, he or she would probably realize that they were pretty concerned about the defendant's conduct after all. In

S.A.O.
EMPLOYEE BIRTHDAYS
DECEMBER 2003

14th
Bob Antonello,
Homicide
Sharon Franklin,
Misdemeanor

17th
Pat Blair, CSE
Elizabeth Hoppe, CSE

18th
Denise Buchanon,
Records

22nd
Trent Cleland, Felony 2

23rd
Jeanette Dugas, Investigations

28th
Wade Warren, Felony Intake

31st
David Haas,
Economic/Environmental
Crimes

Happy Birthday!

MAKING YOUR CASE

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any case, it is always better to know such things prior to filing.

A less obvious example, also drawn from an actual case, might involve proof of a certain status or lack of that status. For instance, in a case where a defendant is engaging in an ongoing scheme to defraud involving the providing of legal services, an essential element of proof of the offenses of unlicensed practice of law and fraud would be that the defendant is not a lawyer. Seems obvious, doesn't it? How is the defendant going to claim that he is a lawyer, when he is clearly not? The problem at trial would be that the defendant would simply not put on a case, and would move for acquittal if the state failed to go forward with proof of the lack of licensure, a key aspect of the fraud. The remedy in that circumstance would be obtaining self-authenticating, sworn document from the Florida Bar showing the defendant is not a lawyer. It can than be entered into evidence as an exhibit to satisfy that element of the proof.

The point of the examples, and there are many others that could illustrate the same principle, is that no material fact can be simply assumed. Every fact and element must be proven. Before a case should be sent to Circuit Court to be prosecuted as a felony, the availability of the essential proof must be completely evident in the contents of the case file, most of which is generated during the course of the police agency investigation. It is not enough that the investigation make it apparent to the informed observer that a defendant committed a crime. It must also be clear that the testimony and exhibits necessary to prove the commission of a crime beyond a reasonable doubt is also readily available. To paraphrase the fictional Detective Harris, it is truly not what you know about a criminal investigation that counts in the end, it's what you can put into the record at trial as proof that makes all the difference.

A final thought before we close: It may occur to a few minds out there to ask why is there so much emphasis on having every little thing in place before the case is even filed since most cases result in pleas? The more astute minds already have the answer: The key to the cost-efficient resolution of cases as early as possible is arraying the proof before the defense in such a way as to show to them that contesting the charges will be futile. To accomplish that effectively, it is essential that the investigation, prior to the filing of charges, be as thorough as possible.

We started this article with a legally realistic observation. Perhaps we should close with one: It has been said that the art and science of the law stands in the same relation to achieving the ideal of justice, as the art and science of medicine stands in its relationship to achieving immortality. Let us then, in our various roles in support of the enforcement of the law, seek the best approximation of that ideal of justice that we can manage. Approaching each set of circumstances with a fresh outlook, avoiding generalized thinking, and attending to the evidentiary details in the early preparation of the case, are some of the best ways of assuring successful outcomes in as many of your cases as possible.

NEWS...

WINTER HAVEN:

After having served 34 years with the Winter Haven Police Department, Major Gay Henry announced his retirement, effective Nov. 30, 2003. During his career, Major Henry served as a patrolman, detective, detective lieutenant, captain and most recently as major in charge of the department's Bureau of Community Affairs.

LAKELAND:

Several high-ranking officers of the Lakeland Police Department will be retiring this month. Combined, they have more than 100 years of law enforcement service! Those officers are:

* Captain Chip Brown, 29 years
* Sgt. Dennis Mack, 13 years
* Sgt. Miles Watson, 20 years
* Officer Jesse White, 20 years
* Detective Jimmy Peace, 30 years total with the City of Lakeland.

PCSO:

Deputy Tom Page retired this month after having served more than 20 years with the Polk County Sheriff's Office.

The State Attorney's Office, Tenth Judicial Circuit, would like to thank each and everyone of you for your many years of service to the citizens of Polk County and the State Attorney's Office. Congratulations to all of you, and we wish you well on your 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 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

...FROM THE COURTS...

WHAT THE OFFICER KNEW, THE PROSECUTOR KNEW

The defendant was charged with and convicted of first degree murder. He subsequently filed a motion for post conviction relief, asserting that the state had knowingly presented false testimony. The facts on which the motion was based were that a woman who testified against the defendant testified that she had received nothing from the state in return for cooperation when in fact she had received a $500.00 reward for coming forward. The officer who paid the witness the reward also testified that she had received nothing. Apparently, the prosecutor who handled the case did not know of the payment. The trial court denied the defendant's motion, but on appeal, the Supreme Court reversed, holding that the state had knowingly presented false testimony because what the officer knew was imputed to the prosecutor. *Guzman v. State*, 28 FLW S829 (Fla. Nov. 20, 2003).

OFFICERS HAD RIGHT TO APPROACH INCARCERATED DEFENDANT

The defendant was charged with first degree murder and filed a motion to suppress his confession. The facts on which the motion was based were that the defendant was arrested on an unrelated charge. He invoked his right to counsel, and at his first appearance hearing on that charge, the court entered an order prohibiting law enforcement from talking to him. The next day, an officer went to see him in the jail about the murder investigation. The officer read the defendant the *Miranda* warnings, and the defendant waived his rights and confessed. The trial court denied the motion to suppress, and the defendant was convicted as charged. On appeal, the Supreme Court affirmed, holding that a defendant's invocation of his Fifth Amendment right to counsel while in custody on certain charges does not prevent police from attempting to question him about other unrelated crimes for which he has not been arrested. *Ault v. State*, 28 FLW S811 (Fla. Nov. 6, 2003).

JUVENILE CONFESSION WAS VOLUNTARY WITHOUT PARENTAL INPUT

The defendant, a juvenile, was charged with a crime and filed a motion to suppress his confession. The facts on which the motion was based were that after the defendant was taken into custody, an officer read him his *Miranda* rights and informed him that his mother had been contacted. He then questioned the defendant who confessed. The defendant indicated that he did not get along with his mother and never asked to speak with her. The trial court denied the motion to suppress, and the defendant was found guilty. On appeal, the Fifth District affirmed, holding that police have no obligation to afford a juvenile the opportunity to speak with his or her parents prior to questioning if the juvenile does not ask to do so. *Frances v. State*, 28 FLW D2489 (Fla. 5th DCA Oct. 31, 2003).

The Legal Advisor Staff Wishes You and Your Family a Safe and Happy Holiday Season...