

Legal Advisor

VOLUME 18, ISSUE 10

DECEMBER 2004



Jerry Hill
State Attorney

IMPORTANT BARTOW PHONE #S:

Switchboard	534-4800
Misdemeanor Intake	534-4928
Misdemeanor	534-4926
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	NUMBERS
Misdemeanor / Traffic	534-4021
Felony	534-4020

The year 2004 will long be remembered for the three hurricanes that tore through this Circuit. As we come to its end, I would like to pay tribute to you, the law enforcement community of Hardee, Highlands, and Polk Counties, who in the face of your own difficulties, did so much to protect the lives and property of those you serve.

On behalf of the entire staff of this office, I wish you a Merry Christmas, and a Happy and Prosperous New Year.

Sincerely

A handwritten signature in blue ink that reads "Jerry". The signature is written in a cursive style and is positioned below the word "Sincerely".

EMPLOYEE BIRTHDAYS

JANUARY 2004

Kelly McCabe, Felony 5

January 10

Pete Mislovic, Misd. Intake

January 13

Kim Stip, Special Prosecution

January 18

Sandy Hall, Witness Mgmt

Donna Roberson, Admin

January 19

Amanda Edmund, FCIC/NCIC

January 21

Ryan Weeks, Winter Haven

January 22

Debbie Bracewell, Worthless Checks

January 23

Heather Chipman, Misdemeanor

January 25

Vince Patrucco, Felony 4

January 26

Sam Cardinale, Admin

Jana Edwards, Felony Intake

January 28

Valerie Wright

January 31

Tiffany Bemby, VOPS

Brenda Losh, CSE

Gary Ellis, Hardee SAO

Happy Birthday!



WHAT WE LOOK FOR IN YOUR REPORTS

by Mike Cusick

A well written report is crucial for the successful prosecution of a criminal case. Absent sworn statements from eyewitnesses, your report is the primary source on which we rely to decide what charges, if any, will be filed. As a result, it is important that you answer the questions: "Who? What? Where? When? Why?" and "How?" in your report. The more complete your report, the less likely we will be contacting you for additional information.

In the typical drug case, the first item we will look at is the reason that you came in contact with the suspect. Was this a citizen contact? Was the defendant detained? If so, what reasonable belief did you have that criminal activity was occurring? If you conducted a traffic stop, what was the infraction that was the basis for the stop? Was a citation issued?

Once you have established a legal basis for the contact with the defendant, the next issue is how the drugs were located. If you searched the suspect and the suspect's property, what was the basis for the search? Was it consensual. If not consensual, did you have probable cause to search the defendant?

Please remember that you cannot conduct a general search under the "Florida Stop and Frisk Law," Florida Statute 901.151. First, if you have a reasonable suspicion that the suspect is engaged in criminal activity, you can temporarily detain the individual. Secondly, while detained, you may search the suspect for weapons only if you have probable cause to believe that the



Mike Cusick is an Assistant State Attorney as well as the Felony Intake Director at the State Attorney's Office. Mike has been with our office since March 1985.

suspect is armed with a dangerous weapon. It is crucial that you explain in your report what criminal activity you believed the suspect had committed, was committing or was about to commit. In addition, if you conduct a pat down for weapons, you must identify those facts which gave you probable cause to conduct the pat down. Remember, there is no "officer safety" exception which allows you to conduct a pat down for weapons. You must be able to satisfy both parts of the "Florida Stop and Frisk Law" in order to conduct a pat down for weapons. While we never want to discourage an officer from conducting a pat down when the officer feels that the defendant is armed with a dangerous weapon, the officer needs to be aware that we cannot legally justify the search if we cannot establish that the officer had probable cause to believe that the suspect was armed.

WHAT WE LOOK FOR IN YOUR REPORTS

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Once you have explained in your report the legal basis for the stop and the search, you must then connect the suspect to the drugs. If the drugs are on the defendant's person, the possession is actual and knowledge and control is assumed. If the drugs are not on the defendant's person, then you need to identify in your report those facts which show that the defendant knew the drugs were present and exercised control over the drugs.

Problems arise when you find drugs hidden in a car and multiple individuals are occupying the car. While a recent United States Supreme Court case ruled that in such circumstances an officer might have probable cause to arrest the occupants, that still leaves us with the problems of proving beyond a reasonable doubt that one or more of the occupants is guilty of possessing the drugs. Any facts connecting one or more of the occupants to the drugs should be documented in your report. Statements by an occupant that the drugs belong to another occupant usually are not helpful but should be included in your report. Such statements are not helpful because a guilty defendant would be expected to blame another occupant to avoid being charged. Taping conversations between two or more suspects while they sit in the back of a patrol car often is helpful in connecting one or both defendants to the drugs.

In non-drug reports, it is usually helpful to write your report in chronological order from the beginning of your involvement in the case to the

end. The summary of any victim and witness interviews should be placed after your chronological report. It is not helpful to have those statements first since we don't know the significance of the statements until we understand the overall facts of the case.

You need to remember that we were not at the scene and may not even be familiar with the layout. As a result, it is important that your report describes important features at the scene that are relevant to the case. For instance, it may be important that the entire yard is fenced-in. We don't know that unless you have described that fact in your report. Or it may be important that an item thought to be tossed down by the suspect does not have dew on it while everything around it was covered with dew. Again, while it is obvious to you, it isn't to us because we weren't there.

Finally, it is important that your report identifies any evidence that was collected as well as all eyewitnesses who were identified or interviewed. We are required to give the defendant's attorney a list of all known witnesses and all evidence collected. If we don't supply that information, then we probably won't be able to use it at trial.

In conclusion, your report is an important source of information on which we rely to file charges, make plea offers and prepare for trial. A well-written report sometimes makes all the difference in the world as to whether or not a defendant is successfully prosecuted.

LEO NEWS

STATE ATTORNEY'S OFC.:

After having served more than 26 years in law enforcement Don Pell, Investigator with the State Attorney's Office, retired October 29, 2004.

FROSTPROOF POLICE:

Frostproof Chief of Police, J. Neal Byrd retired October 22, 2004 after having served more than 32 years in law enforcement. Chief Byrd began his career in 1972 as a dispatcher, shortly after graduating from high school. After completing his required training, he became an officer in 1973 and worked his way up the ranks to Chief of Police in 1993.

Congratulations to both of you on your retirement. Thank you for your many years of service to the Tenth Judicial Circuit.

CLOSINGS

The State Attorney's Office will be closed on the following days:

Thursday and Friday
December 23rd and 24th
* Christmas Holidays
Friday, December 31st
* New Year's Day

If you have legal questions after hours or during the holidays, please refer to the October 12, 2004 after-hours memo for attorney's numbers. For a copy of this memo, contact Lorena Diaz at ldiaz@sao10.com.



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Fax: (863) 773-0115

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411 South Eucalyptus
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Phone: (863) 402-6549
Fax: (863) 402-6563

Polk County

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

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215 N. Floral Avenue
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Fax: (863) 519-4759

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930 E. Parker Street, Suite 238
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...FROM THE COURTS...

BRIEF RETENTION OF LICENSE FOR WARRANTS CHECK IS NOT A DETENTION.

The defendant was charged with possession of cocaine and filed a motion to suppress. The facts on which the motion was based were that as the defendant was walking along a public street at 2:17 one morning, an officer stopped, asked him how he was doing, and requested identification. The defendant gave the officer a driver's license which the officer retained while he ran a warrants check. The check showed an active warrant, and so the offi-

cer arrested and searched the defendant, finding cocaine. The trial court denied the motion to suppress, and the defendant was convicted as charged. On appeal, the Second District affirmed, holding that the brief retention of the driver's license by the officer in order to run a warrants check did not transform a consensual encounter into a detention. *Mays v. State*, 29 FLW D2239 (Fla. 2d DCA Oct. 8, 2004).

SEARCH WARRANT MAY BE USED TO OBTAIN MEDICAL RECORDS.

During a criminal investigation of the petitioner, officers obtained search warrants directed to three doctors and a clinic seeking the petitioner's medical records. After the warrants were executed, the state sealed the records and gave notice of their seizure to the petitioner. The petitioner then filed a petition for writ of *certiorari* in the circuit court seeking the return of the records. The circuit court denied *certiorari*, and the petitioner

then petitioned the Fourth District for review. The Fourth District also denied relief, holding that the seizure of medical records by means of a search warrant does not violate a patient/suspect's right of privacy and that the state is not required to give notice of the seizure to the patient/suspect either before the execution of the warrant or before an examination of the records takes place. *Limbaugh v. State*, 29 FLW D2213 (Fla. 4th DCA Oct. 6, 2004).

INTERROGATION DURING TEMPORARY DETENTION WAS NOT CUSTODIAL.

In this Polk County case, the defendant was charged with Trafficking in Amphetamine and filed a motion to suppress evidence, asserting that the evidence was discovered as a result of statements made during a custodial interrogation without the benefit of *Miranda* warnings. The facts on which the motion was based were that a deputy received information from a reliable confidential informant that the defendant was going to deliver methamphetamine to a certain residence. The deputy, who knew the defendant, waited for the defendant near the residence, and when he drove by, the deputy initiated a stop and activated his emergency lights. The defen-

dant immediately stopped, got out of his truck, walked over to the deputy's vehicle, and started discussing a matter they had previously discussed. During this conversation, the deputy asked the defendant if he had any methamphetamine in the truck. The defendant told the deputy he did, and without asking permission, the deputy went over to the truck and retrieved the drugs. The trial court granted the motion to suppress, but on appeal, the Second District reversed, holding that the defendant was not in custody for the purposes of *Miranda* at the time he made the admission to the deputy. *State v. Poster*, 29 FLW D2368 (Fla. 2d DCA Oct. 22, 2004).