OFFICE OF THE STATE ATTORNEY
TENTH JUDICIAL CIRCUIT
http://www.sao10.com

Legal Advisor

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JERRY HILL
STATE ATTORNEY

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	534-4964
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

ARREST OF VEHICLE PASSENGERS: NEW CASE LAW

By Carol Burlingham

On December 5, 2003, the U.S. Supreme Court issued a ruling which will have an impact upon the conditions under which law enforcement may arrest the passengers within a legally stopped vehicle.

A Baltimore County, Maryland officer stopped a vehicle for speeding. The vehicle contained a driver, a front seat passenger, and a back seat passenger. The officer's suspicions were aroused when he observed a large amount of rolled-up money in the glove compartment as the driver/owner of the vehicle opened it to retrieve his vehicle registration. The officer asked the driver for consent to search, and it was given.

The money was retrieved from the glove compartment ($763.00), and cocaine was found concealed behind the back seat armrest. It was not in plain view of anyone in the vehicle.

The officer questioned all three occupants of the vehicle about the ownership of the cocaine and told them that if no one admitted to ownership of the drugs he was going to arrest all of them. No one confessed ,and all three were arrested for possession of cocaine with intent to distribute.

Later that night at the police station the defendant who had been the front seat passenger gave a confession after Miranda stating that the cocaine belonged to him and that none of the other occupants knew of its presence in the car.

This defendant later contested his confession, saying that it was the product of an illegal arrest.

Previously the law in Maryland (and in Florida) had held that a law enforcement officer was required to prove that the officer had probable cause to believe that a passenger knew of the presence of contraband in the vehicle and exercised some sort of control over that contraband in order to have probable cause to arrest or detain that person.

Now the U.S. Supreme Court has ruled in *Maryland v. Pringle* that it is reasonable to believe that any or all three occupants of the vehicle had knowledge of, and exercised control over, the cocaine and that a reasonable officer could conclude that a passenger committed the crime of possession of cocaine either by him-

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EMPLOYEE BIRTHDAYS

JANUARY 2004

2nd
Kelly McCabe, Misdemeanor

10th
Pete Mislovic, Misd. Intake

13th
Kim Stip, Special Prosecution
Joe Concepcion, Highlands

18th
Donna Roberson, Admin

19th
Amanda Edmund, FCIC/NCIC

21st
Ryan Weeks, Winter Haven

22nd
Debbie Bracewell, Worthless Checks

23rd
Marcia Rountree, Winter Haven

25th
Vince Patrucco, Felony Intake

26th
Sam Cardinale, Admin
Jana Edwards, OPS

28th
Valerie Wright, Misdemeanor

31st
Gary Ellis, Hardee County
Tiffany Bembry, VOPS

FEBRUARY 2004

1st
Hilda King, Felony Intake

2nd
John Kromholz, Hardee
Aramis Donell, Felony 5
Cindy Dorman, Special Pros.

3rd
Cheryl Davison, Highlands County

Happy Birthday!

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ARREST OF VEHICLE PASSENGERS: NEW CASE LAW

Carol Burlingham is an Assistant State Attorney in Felony, Division 5. In addition to her case load, she also serves as the Division Chief. Carol has been with this office for a total of 16 years.

self or jointly. All could therefore be legally arrested. The Court justified its ruling by saying that an automobile is relatively small and that a passenger in the car will often be engaged in "a common enterprise" with the driver and have the same interest in concealing contraband.

While this ruling is a step forward for law enforcement, **IT DOES NOT MEAN CERTAIN THINGS:**

1. It does not mean that just because you have probable cause to arrest everyone in the car that you should do so. Once you arrest a person, speedy trial starts to run. If the State does not have sufficient evidence to link an occupant of the car to the contraband it cannot file the case since it cannot convict at trial. Please try to develop some additional evidence linking one or more persons in the car to the drugs before arresting or detaining any of them. This could be post-Miranda admissions, the statements of another person in the car, or any other evidence implicating the occupant that you want to arrest. Please note that in the Supreme Court case law enforcement was lucky enough to get a confession after the arrest. If it had not been able to do so this case would not have been prosecutable, even though the arrest was valid.

PLEASE REMEMBER: PROBABLE CAUSE TO ARREST DOES NOT EQUAL PROOF SUFFICIENT TO CONVICT.

2. *Maryland v. Pringle* does not say that a passenger can be detained or arrested before contraband is found. If there is no indication that the passenger has committed or is committing some crime prior to the time contraband is found, he or she cannot be detained. In other words, if the passenger decides to walk away while you are asking the owner of the vehicle for consent to search, there is nothing that you can do to stop the passenger, ABSENT SOME OTHER PROBABLE CAUSE TO DETAIN HIM.

3. Please note that the wording of the Court's decision seems to indicate that it will not apply to a building. Also, it most likely will not apply to the trunk of a motor vehicle. While you may obtain consent to search the trunk or you may develop probable cause to search it, the fact that you discover drugs or other contraband in the trunk does not mean that everyone in the vehicle can be charged with possessing the contraband.

Police Chiefs Association Swears In New Officers

On Saturday, January 3, 2004, the Polk County Police Chiefs Association held their annual Installation Banquet to swear in the new officers for 2004. The Installation Banquet was held at the Grasslands Golf and Country Club in Lakeland. The guest speaker was Second District Court of Appeal Judge, Charles Canady.

Chief Roger Boatner of the Lakeland Police Department was sworn in as this year's President, Chief Morris West of the Haines City Police Department was sworn in as Vice-President, and Chief Alan Graham of the Mulberry Police Department was sworn in as Secretary/Treasurer. Sworn in as the association's Board Members for 2004 were Chief J. Neal Byrd of the Frostproof Police Department, Chief Mark Levine of the Lake Wales Police Department , and Chief J. R. Sullivan of the Eagle Lake Police Department. Last year's President, was former Winter Haven Chief of Police, Darrell Kirkland.

Congratulations to each of you. We wish you well on your new duties.

...From the Courts...

DEFENDANT SHOULD HAVE RETREATED

The defendant was charged with second degree murder. Prior to his trial, the state filed a motion in *limine* asking the court to prevent the defense from using the castle doctrine which provides that a person has no duty to retreat when attacked in his or her own home. The facts on which the motion was based were that the defendant went to the apartment of a woman he had known for about a week to help her put together a bed. Later they left to run some other errands. As they did so the woman's ex-boyfriend appeared and attacked her. A struggle ensued and the three ended up back in the apartment. The woman went for help while the two men continued to fight. The defendant picked up a gun and shot the boyfriend as he fled to a bedroom. The boyfriend later died. The trial court denied the motion, and the state sought *certiorari* review in the Third District. The Third District granted the state's petition, holding that a temporary social guest or visitor in a home is not entitled to use the castle doctrine. *State v. James*, 29 FLW D2 (Fla. 3d DCA Dec. 17, 2003).

IMPOUNDMENT MUST MEET STANDARDIZED CRITERIA

The defendant was charged with possession of controlled substances with intent to sell and possession of controlled substances and filed a motion to suppress. The facts on which the motion was based were that officers made a probable cause arrest of the defendant as he was entering his vehicle. They then impounded the vehicle and conducted an inventory search which revealed the drugs on which the charges were based. The trial court denied the motion, and the defendant was convicted as charged. On appeal, the Second District reversed, holding that the state failed to establish the reasonableness of the impoundment and inventory because it did not introduce any evidence that the officers adhered to standardized procedures when they impounded the vehicle and conducted the search. *Beezley v. State*, 29 FLW D14 (Fla. 2d DCA Dec. 19, 2003).

We will be **CLOSED** on Monday, January 19, 2004 in observance of Martin Luther King Day.

The State Attorney's Office, Tenth Judicial Circuit is now online. Visit us at our website: http://www.sao10.com.

Employee Birthdays

February 2004

4th
Hardy Pickard, Felony 3

5th
Richard Castillo, Highlands
Sandra Mathews, Felony 1
Heather Graham, Lakeland

8th
Paul Sessions, Records

9th
Connie Cantrell, Misd. Intake
Carol Burlingham, Felony 5

10th
Jay Wagner, VOPS
Shelley McLeod, CSE

11th
Di Di White, Hardee County

12th
Leisa Hayes, Worthless Checks

13th
George Ann Hodges, Special Pros

14th
Steele Goff, Highlands

18th
Ron Feschak, Investigations

21st
Sandi Williamson, Domestic Violence

22nd
Tina Roy, Felony 2

24th
Dan Hartzog, Felony 4

26th
Ruth Fornella, Highlands
Elizabeth Williams, Special Pros

28th
Cheryal Congdon, Felony Intake

29th
Sheila Tindle, Misdemeanor

Happy Birthday!

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...

MULTIPLE DEATHS IN DUI ACCIDENT WILL SUPPORT MULTIPLE CONVICTIONS

The defendant was charged with and convicted of two counts of DUI manslaughter arising out of an accident in which he collided with another car, killing its two occupants. On appeal, he argued that under the wording of the DUI manslaughter statute, he could only be convicted of one count. The Supreme Court rejected this argument and affirmed, holding that multiple convictions of DUI manslaughter may arise from multiple deaths in a single crash. *Bautista v. State*, 28 FLW S849 (Fla. Dec. 4, 2003).

NOT EVERY GARAGE IS PART OF A DWELLING

The defendant was charged with burglary of a dwelling. At his trial, the home owner testified that she opened a door to the house and saw the defendant standing in her garage with an oil lantern belonging to her in his hand. He was convicted as charged. On appeal, the First District reversed and reduced the conviction to burglary of a structure, holding that there was insufficient evidence to show that the garage was within the curtilage of the house and thus part of a dwelling. *McAllister v. State*, 28 FLW D2736 (Fla. 1st DCA Nov. 26, 2003).

OFFICER HAD RIGHT TO EXPLAIN REASON FOR STOP

In this Polk County case, the defendant was charged with possession of cocaine and filed a motion to suppress. The facts on which the motion was based were that an officer stopped the defendant's vehicle because he could not see a license tag. When he approached the car, he saw a temporary tag hanging in the window. He went to tell the defendant the reason for the stop, and when he saw her he recognized her and remembered that she had an outstanding warrant for her arrest. After he arrested her, he searched the car and found cocaine. The trial granted the motion to suppress because the officer detained the defendant beyond the time he knew she had a valid tag, but on appeal, the Second District reversed, holding that an officer may continue a detention long enough to explain to the person detained the reason for the stop and that if probable cause to arrest develops during that time period, the officer may make an arrest. *State v. Rivers*, 28 FLW D2828 (Fla. 2d DCA Dec. 10, 2003).

DRAWING OF GUN DID NOT TURN DETENTION INTO AN ARREST

In this Polk County case, the defendant was charged with possession of methamphetamine and marijuana and filed a motion to suppress. The facts on which the motion was based were that relying on information from a juvenile informant, an officer pulled his car into a driveway behind the defendant's parked car and activated his overhead lights. The officer then drew his gun and ordered the defendant to get out of the car and lie on the ground. As the defendant did so, he took a bag of a white powdery substance out of his pocket and laid it on the ground. The defendant was then handcuffed. The substance was tested and proved to be methamphetamine. A search of the defendant and his vehicle was then conducted, and marijuana was found. The trial court granted the motion to suppress, ruling that the officer did not have probable cause to arrest the defendant when he ordered him from the car, but on appeal, the Second District reversed, holding that the officer's actions amounted only to a detention of the defendant and not an arrest. *State v. Hendrex*, 28 FLW D2883 (Fla. 2d Dec. 12, 2003).