OFFICE OF THE STATE ATTORNEY, TENTH JUDICIAL CIRCUIT

Legal Advisor

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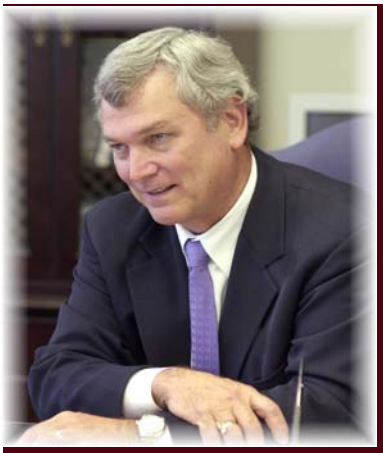

Jerry Hill
State Attorney

Happy Birthday Mr. Hill!
(May 29)

Important Bartow Phone Numbers:

Switchboard	534-4800
Misdemeanor Intake	534-4928
Misdemeanor	534-4926
Victim Assistance	534-4861
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
Witness Management Felony	534-4020

ISSUES OF THEFT AND DEALING IN STOLEN PROPERTY

by Hardy Pickard, Assistant State Attorney

With many new law enforcement officers having come to work in Polk County in the past few years, this is probably an appropriate time to review the law as it relates to the offenses of theft and dealing in stolen property.

There has always been some confusion as to when you can charge a person with theft and when you can place a charge of dealing in stolen property. In Florida, a person does not have to personally steal property to be guilty of theft. If an individual obtains, uses, attempts to obtain, or attempts to use property with knowledge that it is stolen, that person can be convicted of theft.

A common situation you run into is when you find a person in possession of an item of property which turns out to be stolen. That individual will typically give you a story that he obtained the item from someone else and did not know it was stolen. Can you charge that person with theft? The answer depends on being able to prove that the individual knew that the property was stolen. Simply being in possession of stolen property is not a crime. In order to get a conviction, we must prove the person had knowledge that it was stolen. Here are some things you should look for in helping you decide whether to make an arrest for theft:

1) How much time has passed between the theft and the recovery of the property in the possession of your suspect. Obviously, the more time that has passed, the more difficulty you will have in trying to prove guilty knowledge. If you find your suspect in possession of recently stolen property, there is an inference that the person in possession knew or should have known that the property was stolen (See F.S.812.022 [2]). The key here is the word "recently". How recent does the theft have to be in order for the property to be considered "recently stolen property?" Generally, depending on the item, if your theft was within a day of the recovery of the property, the inference may ap-

Inside this Issue:

LEO REMINDERS...

With so many defendants charged with felonies you hold the keys to the jail.

[redacted]

If you send in your FELONY PACKET within 21 DAYS of the arrest, the information is filed on time and the defendant is not entitled to release. If you are late, however, the defendant is entitled to be released from jail. Please help us keep the defendants you arrest in jail. **Turn in your felony packets on time**.

Please remember to notify our office of any of the following:

- Vacation dates
- Training dates
- Scheduled sick days (surgery, family medical leave, etc.)
- Military leave

or any other dates for which you are unavailable for court, depositions, etc.

State Attorney's Office

CLOSED

Monday, May 30, 2005 in observance of MEMORIAL DAY.

ISSUES OF THEFT AND DEALING IN STOLEN PROPERTY

...CONTINUED FROM PAGE 1...

ply. If your theft was longer prior to the recovery of the property, you may not get the benefit of the inference. It is also important to point out that the inference alone is not enough to get a conviction. If all you have is a suspect in possession of recently stolen property, that may be probable cause to make an arrest, but you will need additional evidence for a charge to be filed. We must be able to prove beyond a reasonable doubt that the person knew that the property was stolen. If the suspect comes up with a reasonable explanation as to how he came into possession of the property, unless you can disprove his story, the case probably cannot be prosecuted. The reasonable explanation by the suspect eliminates the inference of guilt provided by the statute.

2) Statements made by others which may point to guilty knowledge on the part of your suspect. For example, your suspect may have made admissions to someone that he knew or suspected the property was stolen.

3) Evidence that your suspect obtained the property at no cost or at a cost substantially below it's fair-market value. It will be necessary to prove the "fair-market value" of the property through a person who is in the business of buying and selling such property. Again this is only an inference so additional proof will be needed.

4) Any evidence that your suspect attempted to dispose of the property at a price substantially below it's fair-market value.

5) The condition of the property may be such that it will give anyone in possession a clue that the property is stolen. For example, finding your suspect driving a stolen car with a "popped" ignition or wires hanging down is good evidence that he knew he was driving a stolen car. Not having a key to the car could also be significant.

Hardy Pickard is an Assistant State Attorney in Felony Division Three. In addition to his caseload, Hardy also serves as the Felony – 3 Division Chief. Hardy has been with this office since July 1, 1973

Another problem we sometimes run into involves when you should charge the offense of Theft as opposed to Dealing in Stolen Property. You should not charge someone with Dealing in Stolen Property simply because the person knowingly possesses stolen property. The appropriate charge in that situation is Theft, assuming you can prove guilty knowledge. You should only charge a person with Dealing in Stolen Property if you have evidence that he sold, delivered, or otherwise disposed of the property or evidence that he obtained the property with the intent to

ISSUES OF THEFT AND DEALING IN STOLEN PROPERTY

...CONTINUED FROM PAGE 2...

resell or dispose of it. Obtaining stolen property for your own personal use is Theft, not Dealing in Stolen Property. Obtaining stolen property in order to resell it constitutes Dealing in Stolen Property. Your typical "fence" would normally be charged with Dealing in Stolen Property since his intent is to later dispose of the property in some manner.

We have seen arrest affidavits submitted to our office in which an individual has been arrested for Possession of Stolen Property. There is no such crime in the State of Florida! You must either charge the suspect with Theft or Dealing in Stolen Property, or both, depending on the evidence. You should also be aware that Florida law states that a person cannot be convicted of both Theft and Dealing in Stolen Property if both charges involve the same item of property.

Hopefully, this short article will assist you in understanding the difference between Theft and Dealing in Stolen Property and will help you in analyzing your factual situation to determine if you have enough evidence to file charges on one or both offenses.

Top Cops

I would like to take a moment to recognize Sgt. Mike Green, Ofc. Keith Hammond, and Det. Ron Brown of the Haines City Police Department. Recently, I had a trial in which a defendant was charged with Driving Under the Influence. Sgt. Green is a certified Drug Recognition Expert and Officer Hammond is a K-9 handler who graduated the 400-hour USPCA canine course. Detective Brown was the Intoxylizer operator in this case and was able to provide detailed knowledge of the operation of the instrument and why it was ineffective in this situation.

This was an *impairment-only* case, with very little physical evidence outside the officers' observations, in which the defendant blew a .000 (zero) on the Intoxilyzer. Despite these readings, we still managed to get a conviction. Sgt. Green was on the witness stand for nearly three hours, walking the jury through every step of the 12-step DRE examination and explaining them in detail, along with the history of the DRE program in qualifying him for only the second time as an expert witness. Officer Hammond's on-scene observations of the defendant dovetailed with Sgt. Green's observations and provided crucial detailed corroboration of Sgt. Green's testimony. Detective Brown was also able to give more crucial observation of the defendant's physical state that corroborated Sgt. Green's testimony. All three of these officers did a great job, and because of their professionalism on the stand, good observations, and total attention to detail in their investigation, it took the jury only 20 minutes to convict the defendant. This, in my opinion, sends a strong message to offenders that we can, and will, prove DUI cases solely on the basis of impairment when we have the evidence to do it.

ASA Torie Avalon, Winter Haven SAO

SAO EMPLOYEES
MAY 2005

May 2nd
Steele Goff, Highlands SAO

May 5th
Theresa Henderson, Misdemeanor

May 6th
Terry Wolfe, Highlands SAO
Stehanie Browder, Child Support Enforcement

May 7th
Annette Cunningham, Special Prosecution

May 11th
Jamie Taylor, Records

May 14th
Bob Stamper, Investigations

May 16th
Annya Patterson, Misdemeanor Intake
Mike Cusick, Felony Intake

May 17th
Derik Nelson, Misdemeanor

May 19th
Julie Rose, Child Support Enforcement

May 20th
Deb Oates, Juvenile

May 24th
Beverly Cone, Investigations
Bill Friel, Domestic Violence

May 26th
Derek Christian, Highlands SAO

May 28th
David Stamey, Misdemeanor

May 29th
Gini Beth Henderson, Felony Intake

May 31st
Carolyn Blair, Administration

Happy Birthday!

Hardee County
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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
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Bartow, Fl 33831-9000
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Fax: (863) 534-4945

Child Support Enforcement
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Fax: (863) 519-4759

Lakeland Branch Office
930 E. Parker Street, Suite 238
Lakeland, Fl 33801
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Fax: (863) 499-2650

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OFFICE OF THE STATE ATTORNEY
10TH JUDICIAL CIRCUIT
P. O. BOX 9000
DRAWER SA
BARTOW, FL 33831

...FROM THE COURTS...

EVIDENCE SUFFICIENT TO SUPPORT BURGLARY CONVICTION.

The defendant was charged with burglary of a dwelling, uttering a forged instrument, and grand theft. At her trial, the evidence established that she had possession of and attempted to cash checks stolen from the victim, who was her neighbor. She was convicted as charged. On appeal, the Fourth District affirmed, holding that the evidence presented by the state was sufficient to support the burglary conviction. *Bender v. State*, 30 FLW D184 (Fla. 4th DCA Jan. 12, 2005).

SEXUAL PREDATOR ACT IS CONSTITUTIONAL.

The defendant was charged with and convicted of a sexual offense. At sentencing, the trial court declared him to be a sexual predator as required by section 775.21, Florida Statutes. On appeal, the Supreme Court affirmed, holding that section 775.21 is constitutional. *Milks v. State*, 30 FLW S55 (Fla. Feb. 3, 2005).

DEFENDANT'S ACTIONS WITHDREW CONSENT TO SEARCH.

The defendant was charged with possession of a controlled substance and filed a motion to suppress. The facts on which the motion was based were that after officers stopped the defendant, who was riding a bicycle, for a headlight violation. The defendant gave the officers consent to search his person. When one of the officers felt a pocket knife in a pants pocket, he reached in to pull it out. The defendant tried to grab it at the same time, and the officer told him not to do so. After the officer retrieved the knife, he felt a bulge in the other pocket. Again, the defendant tried to grab for what was in the pocket, but the officer reached in first and found a pill bottle containing crack cocaine. The trial court denied the motion to suppress, and the defendant was convicted as charged. On appeal, the Second District reversed, holding that the search was not consensual because the defendant's attempts to grab the objects was a non-verbal withdrawal of consent and because the officer commanded the defendant to stop interfering with the search. *Lowery v. State*, 30 FLW D222 (Fla. 2d DCA Jan. 19, 2005).

WHAT ONE OFFICER TOLD ANOTHER JUSTIFIED ARREST.

The defendant was charged with possession of controlled substances and filed a motion to suppress. The facts on which the motion was based were that while driving home, an auxiliary deputy spotted the defendant's car parked at the side of a road, partially blocking an intersection. When he approached the car, he saw the defendant passed out behind the wheel with the keys in the ignition. He awakened the defendant and obtained his driver license. Upon checking the license, he determined that it was suspended. He then told a back-up officer who later arrived what had happened and asked him to arrest the defendant for driving on a suspended license. The officer did so, and a search incident to arrest produced the controlled substances. The trial court granted the motion to suppress. On appeal the Second District reversed, holding that under the fellow officer rule, the officer had the right to arrest the defendant for the misdemeanor driving offense. *State v. Boatman*, 30 FLW D313 (Fla. 2d DCA Feb. 2, 2005).

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