

Legal Advisor

VOLUME 19, ISSUE 5

JUNE 2005



Jerry Hill State Attorney

<http://www.sao10.com>

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
Witness Management FAX	534-4034

PROSECUTORS NEED TO KNOW THE WHOLE STORY

BY JOHN AGUERO

When you are gathering facts to present a case to the State Attorney's Office for possible criminal prosecution, it is extremely important that you try to get the whole story before putting the case in the pipeline. This is true whether you are investigating a simple battery complaint or a multiple homicide case. For the prosecuting authority to make informed decisions, we must know as much as can be known about what has happened.

I recently became aware of a potential misdemeanor prosecution and went to misdemeanor intake to find out what the story was all about. What I found was a complaint affidavit, which alleged that the victim claimed the defendant had struck him and that the victim's brother had seen what occurred. It contained barely more information than what I have explained. The officer never interviewed the brother who supposedly saw what happened and never talked to the potential defendant.

Had the officer taken the time to ask the potential defendant his side of the story, he would have found two more witnesses besides the potential

defendant who had a completely different explanation for what had occurred.

When we, as prosecutors, are forced to make charging decisions in situations like this we often find ourselves at a loss when the case comes up for status conference or pre-trial, or even trial. If we don't know all of the facts, and are surprised, we sometimes find ourselves doubting our own charging decision. This causes needless work by you in law enforcement, involvement by our office and involvement by the court and its personnel, all because the case was not investigated thoroughly in the first place.

Another example from some years ago involved a first-degree mur-

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SAO EMPLOYEES**JULY 2005****JULY 1**

KEVIN KOHL, FELONY 5
KATHY COTTERILL,
MISDEMEANOR INTAKE
JESSICA MCKNIGHT, CHILD
SUPPORT ENFORCEMENT

JULY 4

CAROLINE JOHNSON-LEVINE,
FELONY INTAKE

JULY 7

KATIE PEACHEE, VOPS

JULY 8

MONICA MASSEY,
MISDEMEANOR

JULY 10

GARY RICE, SCORESHEETS

JULY 16

BRANDON HARRIS,
COMPUTER SERVICES

JULY 18

AMY TOLLEY, FELONY 1

JULY 20

MARY A. HENRY, FRONT DESK

JULY 21

CHRISTINE JOHNSON,
HIGHLANDS COUNTY

JULY 23

STACI FLANERY, MISDE-
MEANOR DOMESTIC VIOLENCE

JULY 26

JONI BATIE-MCGREW,
MISDEMEANOR

*Happy
Birthday!*


PROSECUTORS NEED TO KNOW THE WHOLE STORY

...CONTINUED FROM PAGE 1...

der prosecution in which the defendant claimed to have been somewhere else at the time of the crime. While the evidence was overwhelming that he was lying, and, in fact was guilty of the murder, no one ever bothered to go and talk to the people whom he claimed to have been with. By the time the case got to us, the defendant had lined up his witnesses to say what he wanted them to say. Had they been interviewed right away it is likely they would have been caught off-guard and failed to alibi the defendant.

Please remember, that it is your job to investigate crimes, not to just believe the first story you hear, write it down and send it to our office. Take a little time when you begin your investigations and you may save all of us a lot of time later on.

We all appreciate the work you do out there and look forward to receiving



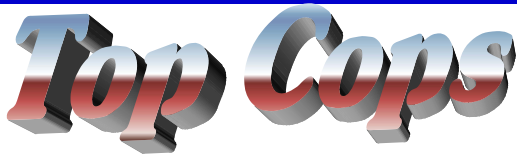
John Aguero is an Assistant State Attorney prosecuting Homicide Cases. In addition to his caseload, John is also the Homicide Division Director. He has been with the office since October 1985.

cases which contain ALL of the facts that you can uncover so that we can make informed decisions regarding prosecution.

MARY ANN HENRY...
CONGRATULATIONS ON YOUR RETIREMENT!!!



Mary Ann Henry will retire on June 30, 2005. She joined the State Attorney's Office on July 23, 1974, and she has worked at the Front Desk ever since. For the past 31 years, Mary Ann has greeted countless victims, witnesses, law enforcement officers, attorneys and judges with a kind voice and a warm smile. We wish her well on her retirement. She will truly be missed.



DETECTIVE CHARLIE GATES

POLK COUNTY SHERIFF'S OFFICE
ASA RALPH GUERRA, FELONY DIVISION 5

I would like to recognize **Detective Charlie Gates** of the Polk County Sheriff's Office. Detective Gates, at great risk to his health, made himself available to testify at the trial of George Sulfridge. Detective Gates has been battling a rare form of Leukemia. His immune system is weakened and he is under doctor's

orders to avoid/limit contact with the "outside world." Despite his illness, Detective Gates made himself available to testify at the trial of George Sulfridge, in which, the defendant was charged and convicted of 14 felony counts, including, possession of child pornography, use of a computer to solicit a minor via the

internet, and attempted lewd battery.

Detective Gate's earnest trial testimony and heartfelt commitment to the children of Polk County is commendable and in no small part responsible for the aforementioned conviction.

OFFICER CHRIS SKINNER AND DETECTIVE KEVIN SHIVER, LAKELAND POLICE DEPARTMENT ASA REY OJEDA, SPECIAL PROSECUTION

I would like to take a moment to recognize Officer Chris Skinner and Detective Kevin Shiver of the Lakeland Police Department for their work on the Redenius case. In this case, the defendant was charged with three counts of Sexual Battery to Person under 12, Lewd Exhibition, two counts of Promotion of Sexual Performance of a Child and two counts of Lewd Battery.

Throughout the time leading up to the jury trial, Officer Skinner was extremely helpful. He answered any questions asked about the case and assisted me in scheduling visits to Lakeland Police Department to review evidence.

The morning of trial, Detective Shiver arrived ready to testify. Due to unforeseen circumstances, I had to release Detective

Shiver. Twenty minutes later, I required his assistance in retrieving a copy of a photograph needed for evidence purposes. I called Detective Shiver and he returned to Bartow, without hesitation.

Because of both Officer Skinner and Detective Shiver's assistance, the defendant was found guilty as charged and received 3 life sentences.

LAKE ALFRED POLICE DEPARTMENT ASA Torie Avalon, Winter Haven SAO

I want to thank Chief Art Bodenheimer and the Lake Alfred Police Department for their patience and good humor in helping me deal with, what was to his department, a frustrating situation on a recent intake matter. In a littering case, for it to be a criminal offense and not a civil infraction, the state has to prove beyond a reasonable doubt that the items

weighed more than 15 pounds.

Chief Bodenheimer and his officers had a situation this month in which they really wanted criminal charges to go through on one such case. After I explained the matter in detail, he ensured that the refuse in question was weighed by the United Parcel Service by an individual that I could subpoena to testify should

the case actually go to trial. I know that it was difficult for them to see why I needed such information on a simple littering case, but in the interest of getting me trial-quality information, they complied with my request in a timely manner. Their assistance here is greatly appreciated.



Hardee County

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Wauchula, FL 33873
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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 Branch Office

Gill Jones Plaza
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Winter Haven, FL 33881
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...FROM THE COURTS...

PLAIN VIEW EXCEPTION DID NOT APPLY

In this Polk County case, the defendant was charged with possession of methamphetamine and paraphernalia and filed a motion to suppress. The facts on which the motion was based were that a deputy obtained permission to search the defendant's residence for a stolen boat motor and a shotgun. In the process of the search, he lifted the defendant's mattress and saw a clear plastic tackle box. He picked up the tackle box to see what was in it and observed

the paraphernalia and methamphetamine. The trial court denied the motion, and the defendant was convicted as charged. On appeal, the Second District reversed, holding that the plain view doctrine was not applicable to this case because since the officer had to pick up the box to determine what was in it, its contents were not immediately apparent. *Jones v. State*, 30 FLW D631 (Fla. 2d DCA Mar. 4, 2005).

USE OF MAINTENANCE OFFICER AFFIDAVIT IS UNCONSTITUTIONAL

The defendant was charged with felony DUI. At his trial, the arresting officer testified that he administered a breath test to the defendant. Over defense objection, the state, relying on section 316.1934(5), Florida Statutes, introduced an affidavit prepared by the officer that among other things gave the date of the most recent required maintenance which had been performed by another officer. Following the introduction of the affidavit, the court over defense objection ad-

mitted the breath test results. The defendant was convicted as charged. On appeal, the First District reversed, holding that the introduction of the affidavit violated the confrontation clause because the affidavit was testimonial hearsay and there was no showing that the officer who performed the maintenance was unavailable and that the defendant had a prior opportunity to cross examine the officer. *Shiver v. State*, 30 FLW D653 (Fla. 1st DCA Mar. 8, 2005).

CONFESSION SUPPRESSED BECAUSE OF OFFICER'S TACTICS

The defendant was charged with attempted robbery with a firearm and filed a motion to suppress his confession. The facts on which the motion was based were that after the defendant had been arrested, an officer told him that he was going to charge him with fifteen robberies, many of which were fictional. The defendant then admitted that he had committed five or six. The officer told him that if he gave the details of

those crimes, he would not charge him with others. The defendant responded by talking about the robberies he had committed. The trial court denied the motion, and the defendant was convicted as charged. On appeal, the Fourth District reversed, holding that the defendant's confession was not freely and voluntarily made because the officer's tactics were coercive. *Samuel v. State*, 30 FLW D763 (Fla. 4th DCA Mar. 16, 2005).

LUMINOL EVIDENCE IS ADMISSIBLE

The defendant was charged with first-degree murder. At his trial, the state introduced evidence of a luminol test which showed the possibility of blood near the defendant's front door. The defense objected to the evidence on the grounds that luminol will react to substances other than blood. The court overruled the objection and admit-

ted the evidence. The defendant was convicted as charged. On appeal, the Fourth District affirmed, holding that the fact that luminol reacts to other substances goes only to the weight of the evidence and does not preclude its admissibility. *MacKerley v. State*, 30 FLW D903 (Fla. 4th DCA Apr. 6, 2005).

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