OFFICE OF THE STATE ATTORNEY, TENTH JUDICIAL CIRCUIT

Legal Advisor

MARCH 2005 VOLUME 19, ISSUE 2

Jerry Hill
State Attorney

Visit us on the Web at:
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
Felony	534-4020
Lakeland SAO	499-2596
Winter Haven SAO	401-2477

JUVENILE CONFESSIONS

By Deb Oates, Juvenile Director

As a general rule, the rights of a juvenile are the same as those for an adult in regards interrogations and confessions. A juvenile must be advised of his or her Miranda rights prior to a custodial interrogation in order for any statement to be deemed admissible. As with adults, any waiver of Miranda rights must be voluntarily, knowingly, and intelligently made. When the age, intelligence, and experience of the child show that the child understands the consequences of any statements and the rights that are being waived, the child can waive his or her rights without the presence or consent of any adult.

VOLUNTARINESS:

A confession, whether made in a custodial or non-custodial interrogation, must be voluntary. The courts have ruled that in determining the voluntariness of a juvenile confession, the "totality of the circumstances" applies. No one factor will necessarily make or break a confession, but the circumstances surrounding the confession will be looked at as a whole. The following is an extensive list of factors that can or have been considered to determine voluntariness in juvenile cases:

1. Age, education and intelligence of the juvenile: The younger a child is or the lower the grade completed, the more closely the confession will be scrutinized. Also, be careful of confessions from ESE students or those with lower than average intelligence.
2. Prior contacts with law enforcement, as well as prior criminal charges: The more prior contacts, the greater chance that the juvenile will be considered to understand the consequences of the confession.
3. Behavior and emotional condition of the juvenile: Was the juvenile crying, upset, or acting unstable.
4. Length of time and place of the interrogation.
5. How responsive the statements were to questions asked: especially, whether the juvenile is fluent in English.
6. The officer's actions toward the juvenile with close attention to any use of threats, promises, or deception.

Inside this Issue:

LEO REMINDERS...

When a prosecutor sets a trial date , he or she attempts to choose a date that does not conflict with the scheduled activities of an officer. For this reason, it is very important that we receive notice of any scheduled time off you may have such as:

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

or any other dates for which you are unavailable.

The majority of our subpoenas are issued 30 days in advance of a trial date. When we receive notification of an absence one week before a trial date, it is nearly impossible to change or continue a trial and work around your scheduled absence. Please keep this in mind and try to give us as much notice as you possibly can. The notice should be on agency letterhead, have your name, identification number, type of leave, and dates you will be unavailable.

Fax or mail these notices to the attention of the Witness Management Division.

Fax #:
(863) 534-4034.

JUVENILE CONFESSIONS

...continued from page 1...

7. Requests by the juvenile to speak to his or her parents or an attorney: This can include the request of the parents to speak with their child before questioning or their request that their child not be questioned.

PARENTAL NOTIFICATION:

Florida Statute 985.207 (2) requires that when a child is arrested, the officer shall attempt to notify the parent or guardian of the child. However, when a child is taken into custody and questioned before a decision has been made to detain him, there is no requirement for parental notification. The notification is required only when a decision has been made to detain the child, and this is only for the purpose of informing the parent of the child's whereabouts.

This statute has not been construed to mean that law enforcement cannot continue with interrogation and work on the case against the juvenile. Taking a confession without actual parental notification does not make it involuntary. Lack of notification will be just one factor examined in the totality of the circumstances of the confession.

CONFESSIONS TO OTHER THAN LAW ENFORCEMENT

There is no parent-child privilege, so parents can be made to testify about statements made to them by their child.

Statements made by a juvenile while being held by other than law enforcement are usually admissible. Many times students are detained and questioned by school personnel. Any confession under that situation should be admissible. However, there has been case law stating that when law enforcement is present with school officials, especially if participating in the questioning, the usual rules for Miranda warnings and voluntariness apply.

Deb Oates is an Assistant State Attorney in the Juvenile Division. In addition to her caseload, Deb is also the Division Director. She has been with the office since March 1985.

RECENT CASE LAW ON JUVENILE CONFESSIONS.

1. The court upheld a confession that was made without parental notification because the juvenile never requested to speak with his mother prior to questioning. The court held that there is no constitutional requirement that police notify a juvenile's parents prior to questioning. The court went on to say that if a juvenile asks to speak with a parent before questioning, all questioning must cease. Elvis T. Frances v. State of Florida, 857 So. 2d 1002 (Fla 5th DCA, October 31, 2003).
2. In this case from December 2004, the court held that a police interrogation held outside a marina was a custodial interrogation requiring Miranda warnings. The officer testified he would not have been able to release the twelve-year-old defendant until a parent arrived. J.C.M. v. State of Florida, 29

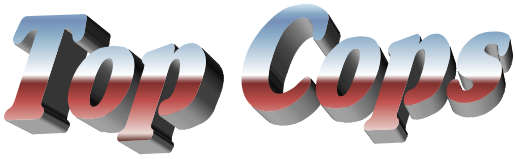
JUVENILE CONFESSIONS

...continued from page 2...

Fla. L. Weekly D 2785 (Fla. 5th District, December 10, 2004)

3. This 2nd DCA case dealt with statements made to an assistant principal by a juvenile who had been called to the office concerning an incident. The court held that the statements were not the result of a custodial interrogation, even though the School Resource Officer was present in the office during part of the questioning and heard the confession. The court held that the school official is not an agent of the police and that the "mere presence" of law enforcement does not transform a school interview into a custodial interrogation. It should be noted that the officer did not ask any questions and was only an observer. State of Florida v. J.T.D., 851 So. 2nd 793 (Fla. 2nd DCA, July 25, 2003).
4. A 2000 2nd DCA case held that the waiver of rights by a hearing-impaired student was not sufficient. In this case, a coach used sign language to interpret the Miranda warning to the student who in turn signed that he understood and wanted to make a statement. Through the coach, he admitted to criminal mischief. The State was given the burden of proving the credentials of the coach as an interpreter. It should be noted that the coach did not testify at the trial. C.W. v. State of Florida, 779 So. 2d 462 (Fla. 2nd DCA, October 25, 2000).

Law enforcement officers requiring further detail or other information on handling Juvenile cases or confessions may contact the Juvenile Division of the State Attorney's Office at (863) 534-4904.



I would like to take moment to recognize Officer Mike Yodonis and Officer Bruce Yoxall from Lake Wales P.D.'s traffic unit and Deputy Mark Stroud of the Polk County Sheriff''s Office.

Lake Wales P.D.

We had a Motion to Suppress set up on a DUI case. Because these two officers quickly responded to my calls to them to discuss the facts, we came in well prepared for it. Both of them knew their case and helped me get ready for the hearing. Thanks to Mike and Bruce's professional appearance in court, with the facts at their fingertips, the defendant chose discretion as the better part of valor and pled rather than risking the loss of his offer and a certain trial, if I prevailed on the motion.

PCSO:

In January this year, Mark was working a case of Aggravated Battery, allegedly involving three youthful offenders. Mark thought he knew who one of them was, but the victim was unable to identify him from a photo-pack. Mark got a tentative photo-pack ID from the victim's wife, and filed the case, however, the investigation did not stop with that filing. He kept looking for the other two individuals. During the investigation, Mark discovered evidence proving beyond a reasonable doubt that the victim's wife had made an erroneous identification, and we had charged the wrong young man-our defendant had not been there at the time. Mark contacted me and explained the situation. He provided me with complete, accurate, and timely information. Although this case ended in a nolle prosequi for that particular defendant, Mark's diligence and good hard police work enabled me to ensure that we tracked down and charged the real perpetrators of this violent incident. Both the victim and I appreciate Mark's hard work in this case. Sometimes justice is done even when we don't file a case, and this was one of those times

Assistant State Attorney Torie Avalon

EMPLOYEE BIRTHDAYS
APRIL 2005

April 4
Amy Watkins, Child Support

April 9
Joseph Williams, Felony Intake

April 14
Mark Levine, Special Prosecution

April 16
Terry Bergum, Investigations

April 17
Donna Smith, Highlands SAO

April 18
John Berndt, Civil Commitment

April 23
Cynthia Fuller, Violation of Probation

April 24
Maria Zucker, Child Support
Lydia McDaniel, Domestic Violence

April 27
Angie Harmon, Misdemeanor Intake

April 28
Beth Stockdale, Felony 3

April 29
Heather White, Highlands SAO

April 30
Joann Bradley, Violation of Probation

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 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
3425 Lake Alfred Rd. 9
Winter Haven, Fl 33881
Phone: (863) 401-2477
Fax: (863) 401-2483

The "Legal Advisor" is published by:

Office of the State Attorney
10th Judicial Circuit
P. O. Box 9000
Drawer SA
Bartow, FL 33831

...From the Courts...

POINTING OUT UNDERCOVER POLICE WAS NOT A CRIME.

The defendant, a juvenile, was charged with resisting an officer without violence. At his trial, an undercover narcotics team officer testified that he saw the defendant walking near a target house and heard the defendant tell two other males who were apparently going to the house that there were police around. The two males fled. The trial court found the defendant guilty, but on appeal the Third District reversed, holding that because the two males had done nothing wrong when the defendant told them of the police presence, it could not be said that the defendant interfered with the officers' performance of a legal duty. *R.E.D. v. State*, 29 FLW D2339 (Fla. 3d DCA Oct. 20, 2004).

STUN GUN IS NOT AUTOMATICALLY A DEADLY WEAPON.

The defendant was charged with sexual battery with a deadly weapon. At his trial the evidence established that he coerced the victim into submitting to a sexual assault by threatening her with a stun gun and discharging it in her presence. He was convicted as charged. On appeal, the Fourth District reduced the conviction to sexual battery, holding that a stun gun is not a deadly weapon as a matter of law and that the state failed to prove that it was used as a deadly weapon. *Jones v. State*, 29 FLW D2389 (Fla. 4th DCA Oct 27, 2004).

RETENTION OF LICENSE FOR WARRANTS CHECK WAS JUSTIFIED.

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 was told of a vehicle parked at night in a normally abandoned warehouse area. When he approached the vehicle on the passenger side and used his flashlight to look inside he saw the defendant slumped over the wheel. The officer knocked on the window with the flashlight, and the defendant immediately woke up and got out of the vehicle. The officer asked the defendant if he was all right, and the defendant said he was. The officer then requested to see some identification, and the defendant handed him his driver's license. Using the license, the officer ran a warrants check and discovered that the defendant had an active warrant. He arrested the defendant, and the arrest led to the discovery of the cocaine. The trial court denied the motion, and the defendant was convicted as charged. On appeal, the Supreme Court affirmed, holding that when the defendant gave the officer the license, the officer still had sufficient cause to go forward with a computer check of the defendant. *State v. Baez*, 29 FLW S663 (Fla. Nov. 10, 2004).

NOT ALL PRIOR DWLSR CONVICTIONS CAN BE USED FOR ENHANCEMENT PURPOSES

The defendant was charged with and convicted of felony driving while license suspended. Subsequently, he filed a motion for post conviction relief asserting that he should only have been convicted of a misdemeanor because two of the predicate DWLSR convictions occurred prior to the October 1, 1997, change in the DWLSR statute which required proof of knowledge of a suspension. The trial court denied the motion, but on appeal, the Supreme Court reversed, holding that convictions under the pre October 1, 1997, form of the statute may not be used to enhance a DWLSR conviction. *Thompson v. State*, 29 FLW S667 (Fla. Nov. 10, 2004).

The Legal Advisor Staff:

Jerry Hill	Chip Thullbery,	Mike Cusick,	Lorena Diaz,
Publisher	Managing Editor	Content Editor	Graphics Design
jhill@sao10.com	cthullbery@sao10.com	mcusick@sao10.com	ldiaz@sao10.com