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TENTH JUDICIAL CIRCUIT

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**Investigating Cases
Involving Abuse,
Neglect or
Exploitation of the
Elderly or Disabled
Adult**

By: Darla Dooley

From the Courts

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Investigating Cases Involving the Elderly or Disabled

By: Darla Dooley, Economic Crimes

General Overview of the Process

Once a complaint is made alleging abuse, neglect or exploitation of a disabled or elderly adult, the Department of Children and Families, Aging and Adult Services, by statute, will initiate an investigation within 24 hours. Florida Statute § 415.104(1) provides that a DCF Protective Services Investigator must perform an onsite investigation to determine: (1) whether the person qualifies as a vulnerable adult, (2) whether the adult is in need of services, (3) the composition of the family or household, (4) whether an indication of abuse, neglect or exploitation exists, (5) the presence or evidence of injuries, abuse or neglect, (6) who is responsible for the abuse, neglect or exploitation, (7) the long term risks through risk assessment instruments, and (8) what services are necessary to safeguard this adult. (§415.104(a-h)) This report is then sent to the various law enforcement agencies to complete their own independent investigations. After the independent investigation is complete, the law enforcement agency is to report its findings to the State Attorney's Office within 5 days. (§415.104(5)). The state attorney shall then report to DCF whether charges were warranted or appropriate in view of the circumstances.

Investigating the Circumstances

Most of the investigations received from DCF will center around investigation and analysis starting in Chapter 825 of the Florida State Statutes. Here we find the offenses of abuse, neglect, lewd and lascivious behavior and exploitation. Like the DCF investigator, the first question law enforcement must ask is whether this person meets the definitions under Chapter 825.

To distinguish, the DCF investigator is looking to see if the person is a "vulnerable adult" as defined under § 415.102(26) not "Disabled Adult" under §825.101(4) or "Elderly Person" under §825.104(5). There are slight distinctions between Chapter 415 and the Chapter 825 so don't simply rely on DCF's investigator's report to assume the victim meets these definitions. Read the Chapter 825 definitions carefully. Next, collect documentary evidence showing the incapacitation or infirmities of the victim. The medical records of the individual as well as the name of the records custodian should be included with your report. Document the records custodian's name and contact information. The medical records should be listed as evidence. Generally, obtaining medical records from the victim's doctor can be done with either an authorization from a person having power of attorney or guardianship or with a medical records subpoena. Be advised that medical records may contain hearsay which will not come into the trial to be considered by a jury. Therefore, ascertain which doctor can testify as to the victim's diagnosis, limitations, infirmities and treatment.

One major concern that I hear from law enforcement involves the advanced age of the victim or the victim's rapidly declining condition. Preservation of the victim's testimony is an obvious concern. The State is not without resources to deal with these situations. The first option the State may choose is to file a Motion to Perpetuate Testimony which is permitted under the Florida Rules of Criminal Procedure. This can occur any time after the charging information is filed when we have good cause, verified and supported by evidence, that the victim's testimony is material and necessary to prevent a failure of justice. Also, by statute, the State may move for speedy trial even as early as with the filing of the information. A word

Investigating Cases Involving the Elderly or Disabled

of caution; when we file for speedy trial, we are asserting we are ready for trial. This means all investigation is complete, all certification of records have been accomplished and a notice of intent to rely on business records is ready to file with the information.

A second major area making investigating these crimes especially tough is “capacity to consent”. Both the lewd and lascivious offense as well as one alternative method of proof under exploitation deal with the victim’s lack of capacity to consent. Under §825.101(9), it is defined as a lack of sufficient understanding or capacity to make or communicate reasonable decisions concerning the adult’s person or property due to some cause listed in the definition. Most likely the proof will come from a doctor who will render an opinion or be able to testify as to the victim’s care and prognosis which includes the lack of capacity to consent.

One final thought on capacity: over the past several months, I have read a number of API reports where the reporter raises issues over money being taken. When I read the API report, the investigator simply states “the victim has capacity” with no factual foundation or reason for making that legal conclusion. What further frustrates the issue is that law enforcement simply closes its case after reading the API report. Assuming the victim does have capacity, the investigation into the missing funds needs to center on specific transactions. The API is not going to conduct a criminal type investigation. The investigator is simply going to make the determinations required under Chapter 415 as stated above. It is likely that the API does not have the criminal investigative training possessed by the law enforcement officer. Finally, if the API determines that the person is not a “vulnerable adult” or in need of



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services, it doesn't prevent that victim from being a victim of another crime.

If for some reason you don't believe that the victim fits the Chapter 825 definitions, there are other statutes which may cover the actions of the offender. Older adults can also be the victims of Grand Theft (§812), Mortgage Fraud (§817.545), Criminal Use of Personal Identification Information (§817.568) to just name a

few. I have seen an increase over the past few months of such cases. Finally, if you look at the big picture and notice that an offender is engaging in 2 or more white collar crimes (§812 Theft, §817 Fraud, §825 Crimes of elderly/disabled adults, §831 Forgery, §832 Worthless checks, §896 Financial Transactions, etc) with the same or similar intent, results, victims or methods of commission and either have 10 or more elderly victims or 20 or more victims, we may charge the offender with aggravated white collar crime under §775.0844: known as “The White Collar Crime Victim Protection Act.” This act packs a powerful punch when it comes to sentencing. If this was the only charge and the offender had no prior criminal history, the offender would score out to 48 months of Florida State Prison.

In closing, what I hope you take away from this article is that DCF make determinations about a victim's psycho-social situation and their need for protection and services. On the other hand, law enforcement makes determinations based on evidence supporting statutory crimes. DCF is there to protect the person, law enforcement is there to bring the offender to justice. While we have the same goal, we have different roles in investigation. If you have questions, I may be reached at 534-4804.



<http://www.sao10.com>

Bartow Phone Numbers:

SWITCHBOARD	534-4800
MISDEMEANOR INTAKE	534-4927
MISDEMEANOR	534-4926
DOMESTIC VIOLENCE	534-4882
VICTIM ASSISTANCE	534-4987
FELONY INTAKE	534-4987
FELONY	534-4964
INVESTIGATIONS	534-4804
VIOLATION OF PROBATION	534-4803
CHILD ABUSE	534-4857
HOMICIDE DIVISION	534-4959
ON CALL PHONE	860-8243
WORTHLESS CHECKS	534-4874
JUVENILE DIVISION	534-4905
FAX-MALROOM	534-4945
WITNESS MANAGEMENT MISDEMEANOR/TRAFFIC	534-4021
WITNESS MANAGEMENT FELONY	534-4020
WITNESS MANAGEMENT FAX	534-4020

FROM THE COURTS...

ENTERING WITH INTENT TO COMMIT RESISTING WITHOUT IS BURGLARY

The defendant was charged with burglary. At his trial, the evidence established that while he was fleeing from an attempted lawful arrest, he entered a structure without permission to evade capture. He was convicted as charged. On appeal, the Third District affirmed, holding that the defendant was guilty of burglary because he entered the structure with the intent to commit the crime of resisting an officer without violence. *Young v. State*, 34 FLW D1352 (Fla. 3d DCA July 1, 2009).

WHEN DEFENDANT RAN IT WAS AN ESCAPE.

The defendant was charged with escape. At his trial, the evidence established that an officer saw him through an open door to his residence and asked him to come outside. He complied, and she then told him that she had a warrant for his arrest. She told him to turn around and put his hands behind his back which he did. However, when she began to handcuff him, he ran away. He was convicted as charged, and on appeal, the Fifth District affirmed, holding that the defendant had been validly arrested at the time he ran from the officer. *McKinnon v. State*, 34 FLW D1825 (Fla. 5th DCA Sept. 4, 2009).

A CASE WHERE MIRANDA WARNINGS WERE NOT REQUIRED.

The defendant was charged with possession of cocaine and driving on a suspended license. He filed a motion to suppress statements he made to the officer who stopped him. The facts on which the motion was based were that an officer stopped the defendant's car because the tag light was out. When the officer asked the defendant for his license, the defendant said it was suspended. At that point the officer asked the defendant to get out of the vehicle while he ran the license. As the defendant was getting out the officer asked if he had any illegal narcotics on him, and the defendant replied that there was cocaine in the vehicle. The trial court granted the defendant's motion, and suppressed the statement about cocaine being in the vehicle. On appeal, the Second District reversed, holding that the defendant was not in custody for Miranda purposes. *State v. Martissa*, 34 FLW D1862 (Fla. 2d DCA Sept. 11, 2009).

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