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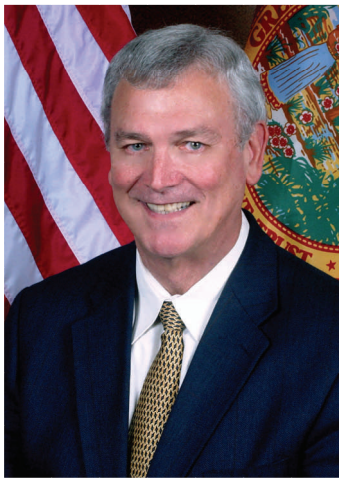

Jerry Hill

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BARTOW PHONE NUMBERS:

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Misdemeanor	534-4926
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Victim Assistance	534-4861
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RESPONDING TO THE GANT DECESION

by Michael Cusick, Felony Intake Director

Mike Cusick is the Felony Intake Division Director at the State Attorney's Office. He has been with the SAO since March 4, 1985.

In the recent U.S. Supreme Court case of Arizona v. Gant, the Court ruled that a motor vehicle may not be searched incident to the arrest of an occupant of the motor vehicle in which the occupant has been removed from the motor vehicle and has been secured by an officer. This is now the general rule, however, there are several important exceptions.

The first major exception is when you are searching for evidence to support any crime for which you have already arrested the occupant. For example, if you are arresting the occupant for an aggravated assault with a firearm that occurred minutes earlier at a party, you could search the vehicle for the firearm. On the other hand, if you just arrested the occupant for DWLSR, you could search the car for proof of DWLSR only. However, if you searched the occupant after arresting him for DWLSR and found drugs his person, then you could search the car for drugs as well.

The second exception is when you obtain consent to search the vehicle. The consent eliminates the need for a legal basis to conduct the search. The consent must be voluntary and may be withdrawn or limited at any time during the search. Consent may not be obtained when the person is unlawfully detained.

The third exception is when you have probable cause to search the vehicle for evidence of another crime. This probable cause may be based upon a positive alert by a drug dog, or an observation of contraband from looking in a window, or by facts supplied by a credible witness establishing that there is evidence in the vehicle.

The fourth exception is

Responding to the Gant Decesion Cont.

where an inventory may be conducted based upon departmental policy. It is important that the policy is **strictly followed** because the court will not uphold an inventory search when it is obvious that the sole purpose of the inventory search was to conduct an otherwise unlawful search. The department's policy should be up to date.

Finally, a search may be conducted when the vehicle is being impounded pursuant to forfeiture proceedings because it was used in the commission of a crime. Again, you must follow your department's forfeiture policies.

School Searches by Hardy Pickard

Since school is now back in session, this seems like a good time to review the law as it relates to searches and seizures that take place at schools.

School searches are conducted by three (3) categories of people:

a) School officials.

b) Outside law enforcement agencies.

c) School resource officers who are law enforcement personnel that work physically within the school.

Searches of students, their property, their cars, or their lockers are subject to the Fourth Amendment. This is true even if the search is conducted solely by school officials. However, the U.S. Supreme Court has recognized that the school environment is such that search warrants are not required. New Jersey v. T.L.O, 469 U.S. 325 (1985).

In order to accommodate the students' privacy interests with the need of teachers and administrators to maintain order in the schools, the U.S. Supreme Court has stated that probable cause is not required for searches by school officials. All that is required is reasonable suspicion. Courts look to two (2) things:

1) Whether there are reasonable grounds to suspect the search will turn up evidence that the student is violating the law or the rules of the school, and,

2) Whether the scope of the search was reasonably tailored to its objective and not excessively intrusive in light of the age and sex of the student, and the nature of the infraction.

Some things that courts look at in deciding whether school officials have reasonable suspicion are:

a) The student's age, history and record in school.

b) The prevalence and seriousness of the problem in the school to which the search was directed.

c) The exigencies of making the

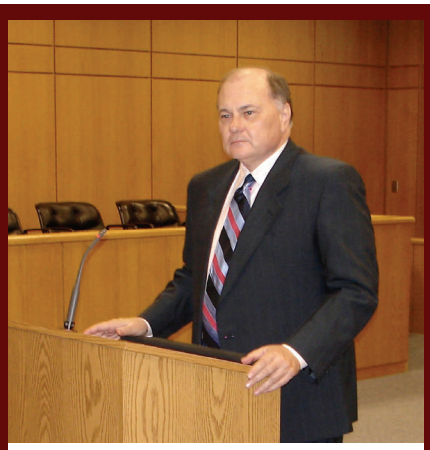
SCHOOL SEARCHES BY HARDY PICKARD

(Continued from page 2)

search without delay.

d) The probative value and reliability of the information used as justification for the search, and,

e) The particular school officials experience with the student.



Hardy Pickard was a prosecutor with the State Attorney's Office for 36 years. He was in the Homicide division before he retired.

This requirement of "reasonable suspicion" as opposed to "probable cause" only applies to searches conducted by school officials. If the search of a student is conducted by an outside law enforcement agency, or is initiated by an outside law enforcement agency, probable cause is still required.

But what about a search initiated by or participated in by a school resource officer?

Courts have been faced with numerous factual scenarios which require them to decide whether to apply the "probable cause" standard or the "reasonable suspicion" standard. Depending upon the degree of involvement of the school resource officer in the search, some examples follow:

1) A student advises a teacher that another student may have drugs on his or her person. The teacher notifies the school resource officer who, after receiving confirmation from the original student tipster, searches the suspect. A court has held that because the investigation was initiated by the teacher and the school resource officer was only assisting her, the reasonable suspicion standard is all that was required. State v. N.G.B., 806 So.2d 567 (Fla.2 DCA 2002).

2) A student advises a school resource officer directly that another student has drugs on his person. The school resource officer told the assistant principal who summoned the suspect to his office and conducted a search. The court said the school resource officers involvement was minimal and the "reasonable suspicion" standard applied. It also said a fellow student's accusation in person constitutes reasonable suspicion. R.L. v. State, 738 So2d 507 (Fla. 5 DCA 1999).

The direction the Courts appear to be heading is that if the search is initiated by or participated in by a school resource officer or school officials only reasonable suspicion is required. If the search is initiated by or participated in by an outside police officer or agency probable cause will be required.

What constitutes "reasonable suspicion" will depend upon the facts of the individual case, but the courts have generally stated an allegation by a named student that another student possesses drugs will constitute reasonable suspicion.

An exception to the "probable cause" standard for a law enforcement officer exists when the officer obtains information that a student is in possession of a weapon, as opposed to drugs or other contraband. The "reasonable suspicion" standard that authorizes a Terry stop and pat down for weapons still applies. T.J. v. State, 538 So.2d 1320 (Fla. 2 DCA 1989).

The courts have also authorized school officials to remove a student from class for

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School Searches by Hardy Pickard Cont

questioning on even less than reasonable suspicion. As long as such removal is not done arbitrarily or capriciously, no violation occurs. J.D. v. State, 920 So.2d 117 (Fla. 4 DCA 2006).

Metal detector searches of students are permissible. State v. J.A., 679 So.2d 316 (Fla. 3 DCA 1996).

It is important to remember that the legal standards for searches in school settings are oftentimes different than in non-school settings and they also differ based upon who is doing the searching.

From The Courts...

RECANTATION CAN COME TOO LATE

The defendant, a juvenile, was charged with giving a false name or identification to a law enforcement officer. At her trial, the evidence established that an officer approached the defendant because he believed that she was involved in throwing eggs at pedestrians. The officer ran the name which she gave him and found an arrest warrant under that name. Accordingly, he arrested the defendant. During the trip to the station, the defendant told the officer her real name. The court found the defendant guilty. On appeal, the First District affirmed, holding that the defendant had not established the defense of recantation because she did not tell the officer her real name until after she had been arrested. *M.G. v. State*, 33 FLW D2046 (Fla. 1st DCA Aug. 27, 2008).

BE CAREFUL USING ANONYMOUS TIPS

The defendant was charged with possession of a firearm by a convicted felon and filed a motion to suppress. The facts on which the motion was based were that police received an anonymous call stating that a black male wearing a white T-shirt and blue jeans shorts was waiving a gun in front of a store. When the officers arrived at the scene they found the defendant who was a black male dressed as described in the call. They secured him at gunpoint and frisked him, finding a firearm in his front pants pocket. The trial court denied the motion, and the defendant was convicted as charged. On appeal, the Supreme Court reversed, holding that an anonymous tip will not provide reasonable suspicion to justify a detention unless the tip is corroborated by more than innocent details. *Baptiste v. State*, 33 FLW S662 (Fla. Sept. 18, 2008.