STATE ATTORNEY'S OFFICE

EIGHTH JUDICIAL CIRCUIT
WILLIAM P. CERVONE, STATE ATTORNEY

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Editors: VonCille Bruce and William P. Cervone

A MESSAGE FROM

YOUR STATE ATTORNEY

MESSAGE FROM ROD SMITH

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As I leave the State Attorney's Office for the challenge of the state Senate, I want to take this final opportunity to express my sincere thanks to the entire law enforcement community for the opportunity I have had to work with you as State Attorney since 1993. I said on many occasions during my Senate campaign that election and service as State Attorney was the greatest honor of my professional life, and I want all of you to know that I mean exactly that.

As State Attorney, I hope I have moved this office forward and improved the way we do things, including the way we work together. While both law enforcement officers and prosecutors have different jobs, each needs the other and both are simply different aspects of the same career.

I have enjoyed working closely together to solve the problems involved in preparing and trying cases. I hope to continue serving the entire law enforcement community from my new position. If I can help, you have only to call.

MESSAGE FROM BILL CERVONE

I would like to begin my tenure as your State Attorney by repeating what Rod has said: I have had no honor and privilege greater than to be your State Attorney, and I thank you for the opportunity to follow both Rod and Gene Whitworth, the two State Attorneys under who I have spent most of my professional life and prepared for this day.

To all of you who have helped me in the past years in learning how to be a prosecutor and what law enforcement is all about, I can say only that I appreciate everything you have done. I hope that I have in the past earned your trust and confidence as an Assistant State Attorney and that over the next few years I can continue to have that same degree of trust and confidence.

I do not anticipate many structural changes within the office, although there will always be personnel changes designed to improve what we do. Some of those

are announced in the next section of the Legal Bulletin. My telephone and office doors are always open to each of you.

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SAO PERSONNEL CHANGES

ASA GREG McMAHON will assume the title of Chief Assistant State Attorney on January 1st. Greg will continue to be assigned to the prosecution of significant cases and will have additional administrative and management responsibilities in his new position.

ASA JEANNE SINGER will become Deputy Chief Assistant State Attorney on January 1st. This is a new position intended to share the administrative and supervisory responsibilities previously split between the State Attorney and the Chief Assistant State Attorney.

Jeanne's former position as the supervisor of the Crimes Against Women And Children unit attorneys was transferred to DENISE FERRERO during the Fall in anticipation of these changes. As a part of her responsibilities, Denise will cover Jimmy Ryce cases on a circuit wide basis.

ASA TIM BROWNING will return to the Gilchrist County office on January 1st after spending the last six years in Levy County. This re-assignment will free some of Tim's time from administrative responsibilities so that he can be given case specific assignments on an as needed basis in Alachua and other counties.

Tim's position in the Bronson office will be taken by DAVID KRIEDER, who has most recently been running the Trenton office. Also in Bronson, MILES KINSELL came on board as an ASA, officially on December 1st and prior to that in a temporary OPS position. Miles is a 2000 graduate of the University of Florida Law School and a Gainesville native.

ASA ROSA DUBOSE will move to a felony position on January 1st in order to concentrate on prosecuting DUI Manslaughter, Vehicular Homicide, and other felony traffic cases. She will continue as the SAO's primary contact person with law enforcement agencies on traffic issues and for training.

Investigator SPENCER MANN has been re-assigned to the Gainesville Intake Division effective January 1st. Spencer will continue to handle PIO responsibilities in addition to assisting with law enforcement and citizen inquiries in Intake.

Investigator VonCille Bruce will assume new responsibilities for County Court cases in Gainesville. In addition to her liaison functions she will work with the lawyers in that division to enhance case preparation.

Investigator CHARLIE SANDERS retired on November 30th after spending the last several years with the SAO in the Levy and Gilchrist

County offices. Charlie will be replaced in those counties by Inv. JESSE BLITCH, who has been most recently assigned to Bradford, Baker and Union Counties. Jesse will be available to agencies in all six counties having need of his polygraph services - arrange that directly with him if it is ever necessary.

ROMAN ALVAREZ joined the SAO as an Investigator on January 1st. Roman comes to us after nearly 15 years with the Bradford County Sheriff's Office, where he has been a part of the command staff under Sheriff Milner. Roman's primary location will be in Bradford County after an orientation period working out of the Gainesville office.

Inv. BARBARA THOMAS left her domestic violence grant position at the end of December in order to persue personal interests. Her position has been filed by DANA RICHARD, who comes to the SAO with a law enforcement background from UPD. Dana will continue what Barbara has been doing in terms of helping with domestic violence cases on a part time basis under the VAWA grant that funds this position.

In the Child Welfare project, several transfers and new hires have also occurred. GLEN BOECHER has transferred from the Trenton office to Gainesville. He has been replaced in Trenton by JOANN HUMBURG, who was formerly in the Palatka office. JoAnn, in turn, has been replaced by PHILLIPA HITCHINS, who goes by PJ. PJ is a December, 2000, graduate of the University of Florida Law School and begins work on January 2nd.

Also starting in January to fill a newly funded position is REBECCA O'NEILL, who comes to the SAO from Shands Legal Services and who will be assigned to the Lake City CWLS office. She joins JAMES McCARTY as a new attorney in that office, where James started in October after many years in private practice in Gainesville and the surrounding counties. In the Bronson CWLS office JOYE CLAYTON started in October as well, also after being a private practitioner for many years. The growth in the CWLS Project over the last year or so has resulted in its staff nearly doubling from when the SAO assumed responsibility for the program, which is in turn a direct result of the success the Project has enjoyed.

KRIS KELLY has replaced Comaria Pettis in the Victim Advocacy division. Kris is a University of Florida grad and started work during the Fall.

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CONGRATULATIONS TO...

...Recently re-elected Alachua County Sheriff Steve Oelrich, Baker County Sheriff Joey Dobson, Bradford County Sheriff Bob Milner, Gilchrist County Sheriff David Turner, and newly elected Levy County

Sheriff Johnny Smith.

...ASAs KIM ECKERT and MILES KINSELL, who were married on October 21st.

...Baker County SAO secretary JULIE MARTIN and her husband Robert, who became the proud parents of baby Cayden Reese Martin on December 11th.

...Alachua County Sheriff's Office SGT. KENNY MACK, who retires in early January after over 31 years of service to the people of Alachua County with that agency.

...ASA TERESA DRAKE, who received the Ellen Foster Award in November in recognition of outstanding, work in dependency. The award was presented by the 8th Circuit Dependency Summit.

...Alachua County Sheriff's Office deputies KEITH FAULK, VERNELL BROWN, and KATHLEEN NEW, all of whom were recently promoted to Sergeant, and JOEL DECOURSEY, who was promoted to Lieutenant. Keith was also named Deputy of the year for his outstanding work with juveniles through the SHOCAP Program.

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A PRIMER ON ARREST WARRANTS

In response to many individual questions about various aspects of the law concerning arrest warrants, this article will summarize what can and can't be done.

Arrest warrants are authorized and controlled by Florida law under Chapter 901 of the Florida Statutes. The simplest explanation for the issuance of an arrest warrant is that the issuing judge "reasonably believes that the person complained against has committed an offense within his jurisdiction." Therefore, all arrest warrants must be submitted to a judge for review of the sworn facts to determine if such a reasonable belief that a crime has been committed exists.

Arrest warrants must be in the form required by Florida Rule of Criminal Procedure 3.121, which requires that the warrant shall 1) be in writing, 2) set forth the nature of the offense charged, 3) command that the person against whom the complaint was made be arrested and brought before the court, 4) specify the name of the person to be arrested, or, if the name is unknown, designate the person by any name or description by which the person can be identified with reasonable certainty (height, weight, race, sex, hair and eye color, approximate age, facial hair, distinguishing characteristics such as tattoos, scars, and so forth), 5) state the date when issued and the county where issued, 6) be signed by the judge with the title of his or her office, and 7) be endorsed with a bail amount and a return date. The "return date" is when the warrant is to be served and the defendant brought before the court, and is inevitably "instanter,"

meaning as soon as possible.

Once an arrest warrant is issued, it is directed to all of the sheriffs of the State. It can only be executed by the sheriff of the county in which an arrest is made, although a deputy sheriff may lawfully do so in the name of and under the authority of the sheriff himself. A municipal police officer, however, who knows about the existence of an arrest warrant may take the subject of the warrant into custody and deliver that person to the county jail for execution of the warrant by the sheriff. For example, if during a traffic stop an officer learns of the existence of an outstanding warrant he cannot technically execute the warrant. He can take the driver to the jail and notify the sheriff, who can then respond and execute the warrant. Municipal police officers and other law enforcement officers cannot execute arrest warrants and should not be asked to do so. This may sound like a distinction without a difference, but it is legally important.

Arrest warrants from another state may be executed by the sheriffs of this state. The arrested person is then held for the demanding state for a time period set by the judge. Law enforcement should immediately notify the original, issuing jurisdiction when an out of state warrant is executed so that extradition proceedings can be started and a transfer of the prisoner arranged when appropriate.

Arrest warrants may be executed on any day of the week and at any time of the day or night. Arrest warrants also permit an officer to enter a building, either residential or of another nature, or onto other property to make the arrest of the named person. Florida is a "Knock And Announce" state, which first requires the officer announce his authority and purpose for being at the scene before entering. This is defined in Section 901.19, Florida Statutes, which also permits the officer to use all reasonable and necessary force to enter and make the arrest if he fails to gain admission after the announcement so long as there is reasonable grounds to believe that the person is present.

Law enforcement officers are not authorized to enter a third person's home with an arrest warrant in order to search for the subject of the warrant. Officers may always enter with consent but, without that, a search warrant for the body of the person is necessary. Put another way, if the person named in the warrant does not reside at the location (such as when the suspect is visiting at the home of his parents, girlfriend, or some other unrelated person) law enforcement cannot enter with an arrest warrant alone.

When making an arrest,

the arresting officer must inform the person being arrested of the cause of the arrest and that a warrant has been issued. The actual warrant does not need to be in the literal possession of the officer.

Of course, this is only a simple overview of the law on arrest warrants. Thousands of cases exist interpreting these basis principals and hundreds of books have been written on the subject. When in doubt, officers should always contact the SAO or, after hours, the on-call Assistant.

The many complexities involved in arrest warrants, including the particularity with which warrants must be drafted, dictate the involvement of the SAO in preparing and reviewing warrant applications. Although it may at times seem like a needless burden to have the SAO involved in that process the possibility of an error being unknowingly made in following what the statutes and court decisions require or in missing a change in those requirements overrides other considerations.

- Contributed by ASA Greg McMahon

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BURGLARY/CONVEYANCE

The Florida Supreme Court issued an opinion in November clarifying the circumstances under which a burglary charge may be made when the object of the burglary is a vehicle of some kind. The case, styled Drew v State, represents a departure in some ways from previous decisions.

In the case, the defendant was caught removing the lug nuts and then the tires from a car. He was charged with a burglary because the statute includes language defining "to enter a conveyance" as including "taking apart any portion of the conveyance" as constituting a burglary. This concept was discussed in the April 2000 Legal Bulletin in an article citing a 4th DCA case, Jones v State, that involved the same facts. The 4th DCA ruled that such facts did not amount to burglary and the Supreme Court has now agreed with that conclusion.

In so doing, the Supreme Court said that any analysis of what was and was not a burglary had to focus on both the act constituting the entry and the intent to commit an offense within the vehicle, each of which is required. The Court went on to say that the requisite intent must be something that could be done inside the vehicle. Therefore, the Court concluded, acts constituting a burglary must be distinguished from acts constituting only a theft.

In other words, removing a hubcap, tires, an antenna, a hood ornament, or something else from the exterior of a vehicle is only a theft and cannot be a burglary, regard-less of the statutory language mentioned above about taking something

apart. The only remaining applicability of that language is to explain acts such as taking apart a part of the motor or a stereo system, which would remain a burglary since the engine compartment or the passenger compartment would have to be entered in order to accomplish that kind of theft.

The April 2000 article noted that we would have to await a Supreme Court opinion on this topic because the Jones case conflicted with several other, older cases. Drew provides that opinion and answers the question. While it is arguable that the Supreme Court is legislating through this opinion rather than simply interpreting existing law, this new restriction on what is required for a conveyance burglary stands as the law in Florida unless the legislature amends the statute at some point in the future.

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IMPLIED CONSENT

In a decision that will affect implied consent cases, the Florida Supreme Court has ruled that the State may not have the benefit of the statu-tory presumptions of impairment in DUI cases under existing FDLE rules governing the collection of blood samples. The decision, issued November 30, 2000, is styled State v Miles.

Miles was the driver of a vehicle involved in an Escambia County accident in which another person was killed. A blood draw was taken and he was ultimately charged with DUI Manslaughter as well as other offenses. He moved to suppress the blood alcohol test results on the grounds that the rules promulgated by FDLE to govern blood testing failed to adequately provide for the preservation of the blood sample prior to testing.

At the hearing, an FDLE expert called by the State testified that it was not necessary for the rules to specify guidelines for handling samples because these were universally known and followed. The FDLE expert apparently agreed, however, that if not properly preserved prior to testing there could well be degradation of the sample to the point where its reliability could not be assumed.

Faced with that testimony, the Court ruled that the absence of any provision in the rule (which can be found in the Florida Administrative Code at 11D-8.012) governing the pre-servation of samples pending testing was impermissible. The ultimate result of this does not mean that a test result is necessarily inadmissible in evidence since the State may still establish that it is valid through other means. What it does mean, however, is that even if a blood

analysis result is admitted into evidence the State may not have the benefit of the statutory presumptions that tell a jury how to interpret that result. In other words, a jury will not be instructed that a person having a test result of .08 or higher is presumed under the law to be impaired.

The only solution to the problem this creates is amend-ment of the rule to provide for what the Supreme Court has correctly said is missing, and how long that will take is uncertain. The process of drafting appropriate rules is apparently underway, but when that will be finalized is anyone's guess. As an interim measure and to give us the best possible shot at still having blood samples admitted into evidence even if the jury is not told about the statutory presumptions, agencies should take special care to insure the refrigeration of all specimens from collection to testing (other than at times of obvious impossibility, such as while in transit) and to document that fact. In its ruling, the Supreme Court specifically referred to Ohio rules that provide for that with the clear implication that such a procedural requirement would go a long way towards solving the current problem with Florida's rules.

Pending a correction of the rules, we are all faced with the dilemma created by this case: juries will probably still hear testimony about blood alcohol levels, but they may not be given all the tools necessary to easily and correctly interpret what a given test result or blood alcohol level means.

- Contributed by ASA Rosa DuBose

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DRUG ROADBLOCKS BANNED

In an opinion issued in late November and styled City of Indianapolis v Edmond, the United States Supreme Court has forbidden drug interdiction roadblocks, saying that they constitute an unconstitutional violation of the 4th Amendment.

The Court conceded in its opinion that it has previously approved checkpoint searches designed to intercept illegal aliens as well as sobriety checkpoints aimed at removing drunk drivers from the road and similar roadblocks intended to verify drivers' licenses and vehicle registrations. All of those types of stops are equally as lacking any degree of individualized suspicion as is a drug check. The Court ruled, however, that such stops ware distinguishable because of their primary purpose, which is to deal with the problems of policing borders and ensuring roadway safety. As opposed to that, the Court believes, a drug checkpoint is aimed at detecting evidence of "ordinary criminal

wrongdoing."

Perhaps most telling about the Court's perspective are comments in the opinion that without this distinction and ruling "there would be little check on the ability of the authorities to construct roadblocks for almost any conceivable law enforcement purpose. Without drawing the line at roadblocks designed primarily to serve the general interest in crime control, the 4th Amendment would do little to prevent such intrusions from becoming a routine part of American life." In trying to justify the frustration of narcotics enforcement that this ruling will cause, the Court simply noted that "the gravity of the threat alone cannot be dispositive of questions concerning what means law enforcement officers may employ to pursue a given purpose."

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SEARCH AND SEIZURE

The 4th DCA issued an opinion during the Fall in a case styled Leahy v State that again illustrates the importance of precision in talking to defendants, even during a simple consensual encounter.

In the case, the defendant was stopped because of a missing tag. No search occurred during the traffic stop, but after it was concluded and as the defendant was walking to his car the office turned back to him and asked if he had any drugs or weapons in the car. There was, prior to then, apparently no reason to suspect that to have been so, but the defendant answered that there was indeed a gun in the car. The officer then searched the car, finding a loaded gun between the driver's seat and the console. The officer then learned that the defendant had no concealed weapon permit and arrested the defendant.

The problem with the arrest centered around the fact that possession of a firearm in a car is not, in and of itself, a crime. At the time of the search, the officer knew only that a gun was in the car, which is insufficient to act upon. The search could hardly be justified as being necessary for officer safety since it did not occur until well after a pat-down would have logically been expected if there was a real safety issue. Moreover, nothing else indicated any reasonable suspicion of some sort of criminal activity.

Had the officer obtained additional information to show that the defendant did not have a concealed weapon permit before the search, or had he determined that the defendant was a convicted felon, again before the search, or had he verified any fact under which the mere possession of the gun would have been unlawful, the result could conceivably have been different. Without that kind of information, however, the court concluded that the

search was unconstitutional.

The lesson to be learned from this case is precision in two ways. First, be precise about what you are asking. Don't assume without asking everything you need to know that anything illegal is going on. Second, be precise in the order you proceed - ask first and then act.

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DEA OFFICE RE-LOCATES

Vincent Mazzilli, Special Agent in Charge of DEA's Miami Field Division, recently announced that the Division's North Florida District Office would be re-located from Tallahassee to Jacksonville. This was largely prompted by the greater volume of cases and agents already being in place in Jacksonville.

As a part of this, Assistant Special Agent in Charge Randall Bohman was re-assigned from Tallahassee to Jacksonville, from where he will exercise supervisory oversight of DEA offices in the District, including the office in Gainesville.

The Jacksonville District Office is now located at 4077 Woodcock Drive, Suite 210, Jacksonville 32207. The main telephone number is 904-232-3566 and the FAX number is 904.232-2501.

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PROJECT PAYBACK UPDATE

As of November 2000, Project Payback has collected over $100,000 in restitution for victims of juvenile offenders since its inception.

Project Payback was created in April of 1997 through a grant and became a part of the SAO in December of that year as a part of the SAO's recognition that restitution should be a priority as a critical concern for victims of juvenile crime where it is even more difficult than normal to collect on court orders due to the age of the defendants. During its first 18 months of operation, $32,700 was collected. In the next 12 months an additional $27,000 in restitution was made to victims. In the 13 month period ending in November 2000 over $40,500 was paid back to victims by juveniles who either became employed or worked off their restitution obligation through community service. According to Gretchen Howard, Project Manager for Project Payback since August 1999, "Prior to Project Payback, the best estimate available is that approximately $180 a month in restitution was being collected. Now we average over $3000 a month in restitution to victims from juvenile offenders. We have had two extraordinary occasions where over $5800 was collected in a month." Money to pay back the community service restitution is provided by dollars directed to Project Payback through deferred

prosecution cases. Juveniles work at a rate of $5.15 an hour and the money earned is paid directly to the Clerk's Office and forwarded to victims. Project Payback also provides individualized job skills training and job location assistance.

Project Payback has recently facilitated a Department of Transportation contract which will put young people who have been ordered to pay restitution to work on weekends performing roadside cleanup. This contract will make it possible for "hard to employ" juveniles to work up to 32 hours a month and earn $165 a month towards restitution that they owe. "We are so fortunate to have partners like the Department of Transportation and Alachua Marine Institute to help make restitution a reality for so many victims of property crimes," says Howard.

Originally limited to Alachua County by funding, Project Payback also recently received a one year VOCA grant which allowed for expansion into the other five counties of the 8th Circuit. Christy Perry now operates Project Payback in Baker, Bradford and Union Counties. Donna O'Connor runs the program in Levy and Gilchrist Counties.

In addition to Program Manager Gretchen Howard, staff include Program Specialist Nicole Perez Stedman and several University of Florida volunteers. To contact any of them or for more information call Gretchen at 352-337-6174 or Nicole at 352-337-6178.

- Contributed by Gretchen Howard

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FOR COPIES OF CASES...

To receive a complete copy of any of the cases mentioned in this issue of the Legal Bulletin, please call Investigator VonCille Bruce at the SAO at 352-374-3670, ext. 2164.