

STATE ATTORNEY'S OFFICE

EIGHTH JUDICIAL CIRCUIT

WILLIAM P. CERVONE, STATE ATTORNEY

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Editor: Rose Mary Treadway

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A MESSAGE FROM

STATE ATTORNEY

BILL CERVONE

As we approach this year's law enforcement memorial ceremonies across the Circuit I think all of us realize that those will have special meaning to not only the law enforcement community but also to the general public this year. After all, the events of September 11th will forever be a part of our history and our own memories.

In addition, we have suffered a personal and more immediate loss in the death of GPD Officer Scott Baird in 2001. All of this adds up to the inscription of such a large number of names on various monuments that it is, as Mayor Guiliano said, almost too much to bear.

There is a silver lining to all of this in that our country has seen a return to some of its core values over the past few months. Not only is patriotism proudly on display in ways it has not been in my memory but also there is a renewed sense of appreciation for the law enforcement community that is evident in many ways.

The reason for this is

in my view simple. The heroic acts of so many police officers and fire fighters in the disasters of September 11th earned the respect and gratitude of the nation. Those acts serve as a visible demonstration and reminder of the dedication of the entire law enforcement community's call to service and have done much to counteract the skepticism that the public had fallen into as a result of the often bad publicity law enforcement receives.

With that in mind I salute each of you who serve our citizens and Circuit, and I extend my personal thanks for the job you do and the sacrifices you make to do it.

I also ask that you remember always that you and everything you do is a statement about your profession as much as it is a statement about you and your department. Keep up the good work and keep striving to be even better at it than you are now.

SAO PERSONNEL CHANGES

SEAN BREWER will join

the SAO on April 1 as an ASA and will be assigned to Levy County, where he will assume Brian Kramer's caseload. Sean has worked as an ASA in Marion County since 1998. As mentioned elsewhere in this issue, Brian will be filling a new grant position dedicated to felony gun prosecutions.

ASA **BETH ONDRIEZEK** resigned her duties as a juvenile prosecutor effective March 8 to open her own law practice in Jacksonville. She will be replaced by **MICHELLE SMITH**, a recent graduate of UF law school, who has been working at the Public Defender's Office.

LAW ENFORCEMENT CHANGES

TOMMY FIRTH, of the Union County Sheriff's Office in charge of the Civil Division, retired after 25 years of service as a deputy.

BILL GALLMON of GPD retired on January 24. Bill has been the latent fingerprint examiner for the department since 1982. His duties will be assumed by Melissa Kilmer.

Sergeant **EDDIE MCCALL** retired from the Alachua County Sheriff's Office in February after 20 years of service. Also Deputies **DICK SCULLY** and **ANNE ALCORN**

retired after each serving almost 23 years, most recently in Court Security.

Cedar Key Police Chief **BUBBA CASTELL** retired on March 1 and was succeeded by **DAN SWIGGER**, formerly of the Inglis Police Department.

CONGRATULATIONS!

In December Lawtey Chief of Police **BUTCH JORDAN** was re-elected to another four year term. Chief Jordan has held office since 1962 and has been named in the Guinness Book of Records as the longest elected police chief in the world.

In January, **PAULA PATTERSON**, SAO Victim Advocate, was selected to receive the William Weber Volunteer Memorial Award that was presented at the 8th Annual Rape Awareness Month Banquet by the Alachua County Department of Community Support Services. This award is given annually to a volunteer from the Office of Victim Services who exemplifies the same quality of care and commitment modeled by Dr. Weber.

Levy County ASA **BRIAN KRAMER** and his wife Annette welcomed new baby Hailey on February 9.

On January 9, GPD officers **W.J. CREWS** and **WHITNEY STOUT** were

individually honored at the Corner Drug Store Annual Meeting for their efforts with local children and teens.

ASO Sheriff **STEVE OELRICH** and **ASO** were also recognized with a Community Involvement Award for assisting with Project MAJIC, a peer mediation program at Eastside High School and Ft. Clarke Middle School, that was in jeopardy of being eliminated due to lack of funding.

ASO Sheriff's deputy **TOM PERSEO** received the Larry Edwards Service Award from the Alachua County CRIMESTOPPERS for his many contributions to that organization. The award was presented at the CRIMESTOPPERS annual meeting on January 11.

At the annual Keep Alachua County Beautiful Awards banquet on January 26, **Squirrel Ridge Park** was recognized with a bronze award in the category of "Outstanding Public Landscaping". This park was dedicated as the Victims' Memorial Park in 1996 and is believed to be the first county park in Florida dedicated to crime victims.

ASA **ROSALYN MATTINGLY** was sworn in as a member of the Florida Bar on January 25. A former Alabama judge, prosecutor and police academy instructor, Rosalyn moved to Gainesville to join her husband Gary, TV 20's

news anchor. She currently serves in the Domestic Violence division.

On February 27, GPD promoted the following: **RICHARD HANNA** to captain, **JARET WEILAND** to sergeant, **WILL HALVOSA** to lieutenant, **JOSEPH RAULERSON** to corporal, **ROBERT KOEHLER** to Sergeant and **DAN STOUT** to corporal.

ASO promoted deputy **CHAD SCOTT** to sergeant in January and **JOHN MOORHOUSE** was promoted to bureau chief of the new Fire Alarm Reduction Bureau in February.

VICTIM'S RIGHTS WEEK

Victim's Rights Week will fall in April of this year. In **ALACHUA** County the following events are scheduled:

On Wednesday, April 24 at 7:30 am, the First Annual Victim Rights Week Breakfast will be held at Eastside High School. The cost is \$10 and the public is invited. The emcee will be Bill Cervone and the guest speaker is Wayne Griffin, Associate Director of the UF Counseling Center.

On Thursday, April 25 at 6 pm, there will be a community planting at the Victims' Memorial Park, Squirrel Ridge Park, located off of Williston Road just west of SW 13 Street,

followed by a 6:30 pm dedication of the playground pavilion and a 7 pm Candlelight ceremony.

The annual State Attorney's Office Blood Drive for Victims will take place at the Gainesville SAO on Friday, April 26 all day.

Anyone can donate blood and you can schedule a specific time in order to avoid waiting. Call Dave Remer at 374-3686 to do so.

In **GILCHRIST** and **LEVY** Counties, the memorials will take place at their respective courthouses at 5:30 pm.

LAW ENFORCEMENT MEMORIALS

The **ALACHUA** County LEO memorial will be held on May 30 at 10:30 am at the Law Enforcement Memorial located off of Tower Road.

Memorial services for **BAKER** County will take place on May 2 at 6 pm at the Baker County SO.

BRADFORD and **UNION** Counties will honor their fallen comrades on May 7 at 6:30 pm at the Bradford County Fair Grounds, Bldg 3.

PROJECT PAYBACK

For the first time during a calendar year, \$50,000 in restitution has been paid back to Alachua County victims of juvenile offenders by juveniles who have either become employed or worked off their restitution by performing documented community restitution service, according to Gretchen Howard, Program Manager for **PROJECT PAYBACK**.

PROJECT PAYBACK was created in 1997 through an Edward Byrne grant and became a program of the State Attorney's Office later that year. Over 600 youths, ages 8-18, have been ordered to participate as a condition of their sentences. **PROJECT PAYBACK** provides individualized job skills training and job location assistance and money earned is paid directly to the Clerk's Office and sent to victims.

PROJECT PAYBACK received a one year VOCA grant that has allowed for expansion into the other five counties of the Circuit. Shannon Hutson works in the Baker, Bradford and Union Counties and Christy Perry and Paula Taylor share a full time position in Levy and Gilchrist Counties. For more information contact Gretchen Howard at 337-6174.

REMINDER:
LEGAL BULLETIN NOW ON-LINE

ALCOHOL TESTING PROGRAM

The Alcohol Testing program now has a website located at www.fdle.state.fl.us/atp. This website contains current FDLE/ATP forms, a calendar of statewide Breath Test Courses, alcohol reference solution lot numbers and expiration dates, notification of rule changes, a link to the Florida Administrative Code, and contact information for the Alcohol Testing Program staff. Call the Program office at (850) 410-8304 for additional information.

UPDATE:
SAO GUN PROSECUTION GRANT

ASA **BRIAN KRAMER** will be assigned to a new grant funded position dedicated to the prosecution and monitoring of felony gun cases on a circuit wide basis beginning on April 1. This grant provides federal dollars for a three year period. Details of Brian's responsibilities are still being worked out but he will be both coordinating and reporting to the State Attorney on all firearm and 10-20-life cases in the circuit as well as actually handling many of those prosecutions.

As announced in our last issue, the Legal Bulletin is now available on-line, including old issues beginning with calendar year 2000. To access the Legal Bulletin go to the SAO website at sawww.co.alachua.fl.us and click on the "Legal Bulletin" box.

TRAFFIC CASES OF INTEREST

A Lake Alfred patrol car attempted to stop a car for a traffic offense in the January case of **JACKSON V STATE** (2 DCA). The car fled from the officer who pursued with sirens and lights activated. The Court held that where there was no testimony or evidence that the unit was "prominently marked with agency insignia and other jurisdictional markings," there can be no conviction for **FELONY Fleeing and Attempting to Elude** pursuant to F.S. 316.1935(2). Note that this statute requires **lights AND sirens AND agency insignia** as prerequisites to a **Felony Fleeing** conviction. It would follow that the use of an unmarked car will likely preclude successful prosecution for the felony.

In a January case also out of the 2DCA, **DONALDSON V STATE**, an officer saw a car pull out of a hotel parking lot with tires squealing. The officer stopped the car because of his belief that the driver was either impaired or fleeing the scene of a crime. The driver was given a citation for improper start and then consented to a search of his vehicle where contraband was found. The Court suppressed the contraband as the fruit of an invalid traffic stop.

The Court found that there were no other cars on the road that could have been endangered, that there was no probable cause that the driver was in violation of 316.154, Improper Start, since the officer could not testify that he saw the car either stopped, standing or parked before he heard the squeal of the tires, and that there is no law violation for squealing tires alone. The Court also said there was no evidence to show any founded suspicion of criminal activity, or even DUI because there was no erratic driving pattern accompanying the squealing.

**U.S. SUPREME COURT RULES ON
SEXUALLY VIOLENT PREDATORS**

Contributed by

ASA Steve Pennypacker

On January 22, 2002, the United States Supreme Court handed down a significant decision in **KANSAS V CRANE**.

This case was brought to the court by the State of Kansas following a prior ruling by the Kansas Supreme Court holding that before a respondent could be civilly committed as a sexually violent predator, the State must prove that the dangerous individual is "completely unable to control his behavior". The Kansas Supreme Court had interpreted the earlier U.S. Supreme Court case of **KANSAS V HENDRICKS** (1997) which upheld the constitutionality of civil commitment of sexually violent predators.

In **CRANE**, the U.S. Supreme Court held that it was not necessary to prove that a person was totally unable to control his behavior before being civilly committed as a sexually violent predator.

In the **CRANE** decision, Michael Crane, a previously convicted sexual offender, was found to suffer from both exhibitionism and anti-social personality disorder.

Michael Crane was convicted at the trial court level of lewd and lascivious behavior for exposing himself to a tanning salon attendant and, 30 minutes later, entering a video store, waiting until he was the only customer present, and exposing himself to the clerk. He then grabbed the clerk by the neck, demanded she perform oral sex on him, and threatened to rape her, before running out of the

store. The State's mental health experts agreed that his mental disorder "does not impair his volitional control to the degree he cannot control his dangerous behavior", but that his behavior was marked by "impulsivity or failure to plan ahead" and "was a combination of willful and uncontrollable behavior".

In reversing the Kansas Supreme Court, the U.S. Supreme Court avoided setting down a bright line rule for other states to follow in applying their own sexually violent predator acts. The language that will be quoted most frequently by both the State and the defense in applying this case is set forth below:

"It is enough to say that there must be proof of serious difficulty in controlling behavior. And this, when viewed in light of such features of the case as the nature of the psychiatric diagnosis, and the severity of the mental abnormality itself, must be sufficient to distinguish the dangerous sexual offender whose serious mental illness, abnormality, or disorder subjects him to civil commitment from the dangerous but typical recidivist convicted in an ordinary criminal case".

What this means is that a sexual offender must have some abnormality different from the ordinary criminal.

As the court emphasizes, the phrase "difficulty in controlling behavior" does not mean absolute inability

to control behavior. Unfortunately, the Court does not go on to define "difficult to control behavior". The Court states:

"... the Constitution's safeguards of human liberty in the area of mental illness and the law are not always bright-line rules. For one thing, the States retain considerable leeway in defining the mental abnormalities and personality disorders that make an individual eligible for commitment."

So what does this mean for the State of Florida and, particularly, those of us in the Eighth Circuit who seek to civilly commit sexually violent predators under the Jimmy Ryce law?

To answer this question, we must first look at the current statute in Florida.

The Involuntary Civil Commitment of Sexually Violent Predators Act (commonly known as the "Jimmy Ryce Law") was passed by the Florida legislature in 1999. The law can be found at Secs. 394.910 - 394.931, Florida Statutes (2001).

The process of civil commitment begins before the release of the respondent from his criminal incarceration. The potential respondent is screened based upon the nature of his past offenses, his mental health status, his institutional adjustment, and history of treatment. A multi-disciplinary team composed of psychologists from the Department of Children and

Family Services (DCF) makes an initial determination of whether the individual meets commitment criteria. If the records review indicates a potential commitment, the individual is evaluated by two independent psychologists or psychiatrists who then file a report with the multi-disciplinary team. The entire packet is then forwarded to the State Attorney in the circuit where the last offense was committed. The State Attorney then decides whether to file a civil commitment petition. Once filed, the petition is reviewed by a circuit judge ex parte for a probable cause determination. If the court finds probable cause, an order is entered requiring the respondent to be delivered to DCF to be held in a secure facility pending final determination of the civil commitment proceeding. The respondent is entitled to court-appointed counsel if found to be indigent. The respondent may request and the court may on its own conduct an adversary probable cause hearing if a trial is not held on the civil commitment petition within thirty days.

The respondent is entitled to a jury trial on the merits of the petition.

Such a request must be in writing at least five days prior to the start of the trial. Unlike a criminal trial, the burden of proof upon the state is clear and convincing evidence rather

than beyond a reasonable doubt. If the jury determines that the person is a sexually violent predator, the person is committed to the custody of DCF for treatment until such time as the person's mental abnormality or personality disorder has so changed that it is safe for the person to be at large. A review of the person's mental condition is to be held at least once each year after commitment.

For the application of the **CRANE** decision to Florida cases, we must look at the definition of a sexually violent predator in Florida found in F.S. 394.912(10). A sexually violent predator is any person who

- (a) has been convicted of a sexually violent offense, and
- (b) suffers from a mental abnormality or personality disorder that makes the person likely to engage in acts of sexual violence if not confined in a secure facility for long-term control, care, and treatment.

"Likely to engage in acts of sexual violence" means the person's propensity to commit acts of sexual violence is of such a degree as to pose a menace to the health and safety of others. F.S. 394.912(4).

Applying the "difficulty in controlling his behavior" requirement of the **CRANE** decision to the "propensity to commit acts of sexual

violence" means only that the State must prove that the mental abnormality or personality disorder from which the respondent suffers is of such a nature that he has difficulty controlling his behavior. Provided this testimony is elicited from the mental health expert and is supported by the other evidence in the case, the State has met the holding in **CRANE**.

In sum, the case of **KANSAS V CRANE** should not have a great impact on the civil commitment of sexually violent predators in Florida. Proving that a respondent has difficulty in controlling his behavior is already an implicit element in showing that the person is likely to engage in acts of sexual violence. This statute is a useful tool in keeping sexually violent predators from committing additional acts even though their criminal sentence has expired.

If you have any questions regarding Jimmy Ryce cases, please call Steve Pennypacker at (352) 374-3696.

FOR COPIES OF CASES...

For a copy of the complete text of any of the cases mentioned in this or an earlier issue of the Legal Bulletin, please call ASA Rose Mary Treadway at the SAO at 352-374-3672.