

# STATE ATTORNEY'S OFFICE

EIGHTH JUDICIAL CIRCUIT  
WILLIAM P. CERVONE, STATE ATTORNEY

Legal Bulletin 2004-01  
Editor: Rose Mary Treadway

January 2004

## A MESSAGE FROM STATE ATTORNEY BILL CERVONE

Happy New Year to all! It hardly seems possible but we are already into the fifth year of what is no longer exactly a new millennium. Fortunately, Y2K bugs have yet to materialize, at least in any significant way that I know of.

As we begin 2004, let me again thank each of you for all you do in providing for the public safety of our citizens. I've never been one for extravagant New Year's Eve celebrations and I am nearly always at home, usually asleep, when midnight strikes. Instead of parties, my New Year's is more a time for reflection on where we've been during the past year and where we hope to be in the new year.

In that regard, there is good news for all of us in the criminal justice system. What we are doing and the way we are doing it is working. The proof of that is in crime rate statistics released recently by FDLE for the first half of 2003. Those numbers show a continuation of a trend that we have had for several years.

The crime rate for the Circuit was down in the period from January to June of 2003 by roughly 5%. This is a per capita number that offers a truer picture of where we really are

than raw numbers do because it measures things against our growing population. Even more significant, the declining crime rate for the Circuit during this reporting period follows several years of continuing reductions in our crime rate.

Clearly, you are doing a good job of apprehension and prevention. I also think that my staff is doing a good job of locking up the people who pose a threat to public safety while identifying the people who can be rehabilitated.

Together the result is clear: we are making great progress in the fight against crime and all of our communities are safer as a result.

Keep up the good work in the coming year and may 2004 be a safe and prosperous time for each of you and your families. We look forward to continuing to work with you and accomplishing even better things in the future.

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### SAO PERSONNEL CHANGES

Effective January 1, Gainesville ASA **BRIAN KRAMER** is transferring to the Levy County office as Division Chief.

Levy County ASA **DAVID KREIDER** has returned to the Gainesville office to cover **KEVIN ROBERTSON'S** caseload while Kevin is on paternity leave.

Gainesville ASA **JAMES COLAW** has transferred into **BRIAN KRAMER'S** gun grant position.

Gainesville Traffic ASA **JOSH SILVERMAN** has moved to **JAMES COLAW'S** Felony position.

ASA **GREG WILSON** has resigned to take a position as an ASA with the 14<sup>th</sup> Judicial Circuit in Bay County.

New ASAs **STACEY GROSS STEINBERG** and **ANGIE CHESSER** have joined the Gainesville County Court division. Stacey and Angie are both former interns and UF Law School graduates.

ASA **BEVERLY POLIAKOVA** has transferred into a traffic position in Gainesville from her misdemeanor assignment.

ASA **RICH CHANG** will supervise interns.

**GREG FORHAN** is the new Bradford County ASA from the 7<sup>th</sup> Circuit State Attorney's Office to fill the felony position vacated by **TODD HINGSON**.

Bradford County also welcomed new ASA **CHRIS ADAMEC** in October, replacing **JOHN BROLING** who left to take a position in private practice. Chris is a graduate of Florida Coastal Law School.

### CONGRATULATIONS!

At the annual GPD Investigations Bureau banquet, the following officers received recognition in various categories:

**LISA SATCHER**, the R.T. Angel Award to recognize her expertise and value to the Detective Division as well as the Stephen Kramig Award in Property crimes, to recognize her success in investigations significantly impacting the community.

**VALERIE DAWSON**, the R.B. Ward Leadership Award, to honor her contribution to the professional management of criminal investigations and/or significant personal development in the skills of criminal investigations.

**JORGE CAMPOS**, the Steven Kramig Award in crimes against persons, to recognize his success in investigations of major cases significantly impacting the community.

**BRETT STARR**, the James H. Ward Award for Forensic Excellence.

**GRETA MOREAU**, the Investigations Bureau Civilian Award in recognition of her contribution to the Investigations Bureau.

New GPD officers sworn in on December 5 are **DOUG WARD**, **JAY SIPOS**, **SHELDON RENARD MCKINZIE**, **KIRK HOLMES**, **NICOLE F. SPELLMAN**, and **SEAN DHILLON**.

New ASO deputies sworn in during October are **JASON FLEMING**, **HEATHER CUTLER**, **JACQUELYN DECOURSEY**, **SHAWN BROOKS**, **MICHAEL WARD**, **LORRAINE CURTNER**, **MICHELLE JONES**, **GEORGE GARNER**, **JACOB RUSH**, **RICHARD WALKER** and **PATRICK TOMBLER**.

Long time Gainesville Fire Rescue Department Public Information Officer **STUART**

**SCHWARTZ** retired in December.

In October, Gainesville Correctional Institution announced that **RILEY RHODEN** had been appointed as Correctional Officer Major at GCI.

The Chiefland Women's Club hosted Law Enforcement Appreciation Day in September and awarded honors to the following:

Chiefland Police Department Officer of the Year: **RAY TRIMBLEY**.

Levy County Deputy of the Year: **ROB BOWERS**.

Levy County Jail Officer of the Year: **DANIEL ANTIS**.

Florida Fish and Wildlife Conservation Commission Officer of the Year: **JAY RUSSELL**.

In November, GPD Lieutenants **WILLIE WASHINGTON** and **EDWARD VAN WINKLE** were promoted to the rank of Captain.

Sergeants **WAYNE ASH** and **COREY DAHLEM** were promoted to the rank of Lieutenant.

Corporals **STEVEN BAKER** and **JAMES JENDZIO** were promoted to the rank of Sergeant.

Officers **ADAM MYERS** and **MICHAEL SCHIBUOLA** were promoted to the rank of Corporal.

GPD Crime Analyst **JIM MALLARD** won first place in the 2003 International Association of Crime Analyst's Bulletin Contest. The award recognizes excellence in the quality and design of criminal activity bulletins. Judges

selected the winner from entries representing 24 agencies in the U.S. and abroad.

GPD Captain **BUDDY CARROLL** retired in October after 30 years of service to the Department.

SAO Victim Advocate **ANNE HAYNES**, who assists victims in Baker, Bradford and Union Counties, was honored as the recipient of the Heart of MADD Award at the MADD Appreciation Dinner in Jacksonville in November. This award is given to the individual who has made a significant positive impact on the lives of those individuals who have been tragically impacted by drunk drivers.

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### **MOTORIZED SCOOTERS**

In September, the Ormond Beach Police Department requested the Attorney General's opinion about "go peds" or motorized scooters and whether these required a driver's license to operate in Florida and whether they could be operated on sidewalks. AG Charles Crist has issued the following opinion:

*"I am of the opinion that pursuant to Ch. 322, Florida Statutes, the operator of any motor vehicle, including motorized scooters, on the public roadways is required to have a driver's license. The definition of "motor vehicle" in Chapter 320, Florida Statutes, also includes motorized scooters. While that chapter requires any motor vehicle to be registered, there is no classification for motorized scooters and the Department of Highway Safety and Motor Vehicles has therefore advised that since such vehicles may not be registered, they may not be operated on the public streets and roads. While motorized scooters are excluded from*

*the definition of “motor vehicle” for purposes of Chapter 316, Florida Statutes, they still constitute “vehicles” as that term is defined in Chapter 316, and therefore are prohibited from operating on sidewalks. Electric personal assistive mobility devices, however, are specifically authorized to be operated on certain roads and on sidewalks without a driver’s license and without being registered.*

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### **PROSECUTOR AIDS DEPUTY IN FIGHT**

*The following is reprinted from an article in the St. Petersburg Times in October. Steve Walker is a former ASA in Gainesville.*

Hillsborough Assistant State Attorney Stephen Walker was walking toward the County Courthouse on Thursday morning when he saw a sheriff’s deputy scuffling with a bleeding man in the street.

The pair struggled over a police baton, took swings at each other and pushed one another against the sheriff’s cruiser.

Walker saw people standing around watching the fight, but no one made a move to help or call police.

Just as the man straddled the deputy and pressed the baton against his neck, Walker stepped in.

“I jumped in, grabbed the kid, threw him on the ground and the deputy handcuffed him,” said the 6-foot-2, 200-pound Walker, who was wearing a dress shirt and tie. “I just didn’t want to see the officer get his butt kicked.”

Walker, 26, is credited with saving the deputy,

29 year old Stuart Bell, who had tried to help the man after he fell from his bicycle.

According to the Sheriff’s Office, two TECO workers flagged down the deputy near N East Street and Kennedy Boulevard near the courthouse annex to report that a man was on the ground.

Bell approached the man, whose face was covered with blood, his bicycle nearby. Bell was trying to determine if he needed to call paramedics when, without warning, the man swung at him, according to a police report.

The pair fought for several minutes, with Bell pulling out his baton, before Walker arrived.

The man was identified as Michael Victor Del Toro, 19, of Tampa. He was taken to Tampa General Hospital for treatment and then to the Orient Road Jail. The deputy was not injured.

Del Toro is charged with attempted murder of a law enforcement officer and battery on a law enforcement officer.

Walker returned to work, where a day earlier, he had prosecuted a man on charges of battering a law enforcement officer and resisting arrest with violence. That defendant was sentenced to seven years in prison.

### **CASE LAW UPDATE**

#### **MOTEL ROOM AND WARRANTLESS ENTRY**

A warrantless entry of a Defendant’s motel room was unlawful because no exigent circumstances existed other than those created by the officers themselves through their unreasonable fears, subjective speculation and lack of knowledge about the situation at hand,

the First DCA held in Lee v. State issued in October.

Anthony Lee appealed his conviction on drug trafficking charges. After a confidential informant tipped police about a drug deal that would occur in a motel room, eight or nine officers staked out the motel and sent the informant inside wired with listening devices. Police monitored the drug transaction and decided to enter the room after becoming concerned they might lose control of the situation. Officers knocked and announced their presence, then used a battering ram to enter the room. Officers seized contraband and arrested Lee. The trial court denied Lee's motion to suppress the evidence on the basis that the officers had probable cause and exigent circumstances to justify entering without a warrant.

The DCA disagreed and reversed. "Any fears that it would not have been possible to control the suspects were not reasonable, given that the suspects were so outnumbered and did not know that police were outside," the DCA said. "Neither a lack of knowledge nor sheer speculation or guesswork about the situation at hand translates to exigent circumstances. Police must have a factual basis to forego a warrant and enter a constitutionally protected area; it is not enough that they are uninformed and subjectively afraid the situation may be worse than anticipated... The possibility that the drugs might be destroyed was not a valid exigency, because that possibility did not actually exist until the officers knocked on the door and announced their presence."

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**MORE SEARCH & SEIZURE AND  
READABLE TAGS**

A police officer was on routine patrol when he stopped River's car because he did not see a license plate. As he approached the car, he saw a temporary tag in the rear window but could not read the numbers.

The temporary tag, which was valid, was hanging off the window. The officer walked up to Rivers, intending to tell her the reason for the stop and to ask her to tape the tag on the window so that it was visible from outside the car. When the officer saw Rivers, he immediately recognized her from a prior encounter. He arrested her based on his knowledge that there was an outstanding warrant for her arrest. During the search incident to arrest, cocaine was found.

Rivers moved to suppress the cocaine alleging that the detention was illegal based on the 2003 Florida Supreme Court's Diaz decision which held that an officer realizing that a temporary tag was valid could no longer detain the driver to obtain additional information. Diaz held that the only allowable personal contact an officer could make with the driver after determining that the tag was valid would be to explain the reason for the initial stop.

The Second DCA in Rivers v. State held that the officer legally detained Rivers based on his independent knowledge of the outstanding warrant rather than on the basis of the temporary tag. "His recognition of Rivers supplied the probable cause to justify her continued detention." The search of her car was incident to a lawful detention and arrest.

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**SEARCH AND SEIZURE:  
WARRANTLESS SEARCH OF  
VEHICLE**

Based on a tip from a confidential informant that

Jaimes was at a lounge selling cocaine, officers went to the lounge to execute outstanding warrants on Jaimes. Officers saw Jaimes exit his vehicle, get into a truck occupied by another man, and then thirty seconds later get out of that truck and meet with a female. After observing this activity, the officers approached Jaimes, told him about the warrants, and arrested him. After a search incident to arrest, Jaimes produced car keys but refused to identify his vehicle.

At first, officers attempted to open cars Jaimes had been seen exiting, but these attempts were unsuccessful. Then officers phoned Jaimes's wife, advising her that there had been an accident to induce her to identify the correct vehicle. Her description led them to his vehicle, which the officers unlocked, entered, searched and found cocaine.

Rather than immediately taking Jaimes to jail for booking on the warrants or cocaine charge, they took him to his home where they found more cocaine and cash. Jaimes moved to suppress all of the evidence obtained as a result of the vehicle and home searches.

The Second DCA in Jaimes v. State suppressed all of the evidence ruling that the search of his vehicle was not a valid search incident to arrest, because the defendant had exited his vehicle long before officers initiated contact with him and there was no nexus between his arrest and the search of the vehicle. The search was not necessary because of officer safety concerns, and, because officers had possession of the keys to the vehicle, there was not a legitimate concern over preservation of evidence.

Because officers did not observe the defendant dealing drugs, and no evidence was adduced as to the veracity of the informant who reported that Jaimes was selling drugs at the lounge, officers lacked probable cause to believe that

he was committing, or recently had committed, a new crime. The search was also not a valid inventory search where the vehicle had not been impounded, and no evidence was presented that a standardized procedure had been followed.

Absent a search warrant, there are three valid means by which law enforcement may search a vehicle: (1) incident to a valid arrest of a recent occupant of the vehicle; (2) under the "automobile exception" to the warrant requirement, which requires exigent circumstances coupled with probable cause; and (3) when a vehicle has been impounded, as part of a reasonable inventory search following standardized procedure.

Because validity of the search of Jaimes's home after the vehicle search depended on the validity of the vehicle search, the home search was also invalid.

### **SEARCH & SEIZURE: INVESTIGATIVE STOP/PURSUANT TO ARREST**

A juvenile was arrested for burglary and subsequently agreed to assist law enforcement in arresting his drug supplier, who provided drugs to the juvenile in exchange for stolen radios.

The juvenile made a controlled cell phone call to Hendrex who agreed to meet the juvenile at the juvenile's residence to look at some radios.

In an effort to stall Hendrex and give officers time to reach the residence, an officer posing as the juvenile's friend told Hendrex that the juvenile would be back shortly. Fearing that Hendrex was getting antsy and might leave before the officers arrived, officers provided a detailed description of Hendrex's car and Hendrex to another officer patrolling the area. This officer was advised that there was probable cause for Hendrex's arrest.

This officer approached Hendrex in the driveway of the residence, pointed his service weapon at Hendrex and ordered him to the ground. Hendrex complied. While on the ground, Hendrex removed a small baggie containing white powder from his pocket and placed it on the ground. This baggie was later found to contain Methamphetamine. A subsequent search of Hendrex revealed more drug contraband.

The trial court granted the Defendant's motion to suppress, ruling that the informant's tip did not give police probable cause to arrest him although it was enough to detain him for an investigatory stop.

The Second DCA in State v Hendrex overruled the trial court stating that both the investigatory stop and the arrest were valid. "The juvenile informant was known to the police and had provided them with information in the past." "...The reliability of the information .. provided was demonstrated by his ability to influence and predict the future conduct of the defendant. When the defendant responded to the phone call from the informant, the police were thus able—at least to some extent – to corroborate the reliability of the informant." Hendrex argued that the credibility of the informant's tip should have been discounted because the tip was offered merely to curry favor with the authorities. But the court noted that the informant's desire to curry favor would in fact make it *more* likely that he would provide truthful information rather than untruthful information.

The fact that the stop was effected at gunpoint did not convert it into an arrest. "It has long been recognized that in a properly justified investigatory stop an officer has ground 'to insist on an encounter'... that is 'to make a forcible stop'."

Nor does the fact that the officer who detained

Hendrex had been told—and believed—that there was probable cause to arrest Hendrex mean that the initial detention of Hendrex was an arrest. "The police officer's words alone cannot transform an investigatory stop into an arrest."

Here, probable cause for arrest occurred by the placement of the baggie containing what appeared to be illegal drugs in plain view of the officer.

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### KNOCK AND ANNOUNCE

When federal and local law enforcement went to Bank's apartment to execute a warrant to search for cocaine, they called out "police search warrant" and rapped on the front door hard enough to be heard by officers at the back door. They then waited for 15 to 20 seconds with no response, and then broke open the door. Banks was in the shower and testified that he heard nothing until the crash of the door.

The Ninth Circuit Court of Appeals ordered the evidence suppressed, ruling that there were no exigent circumstances, thus making forced entry by destruction of property permissible only if there was an explicit refusal of admittance or a time lapse greater than the one here.

The United States Supreme Court in U.S. v Banks reversed the Ninth Circuit and ruled that a 15 to 20 second wait after rapping on the front door hard enough to be heard by officers at the back door *was* sufficient to satisfy the Fourth Amendment. The Court stated that the facts known to the police are what count in judging reasonable waiting time and there was no indication that they knew that Banks was in the shower and thus unaware of an impending search. The crucial fact in this case was not the time it would take the defendant to reach the

door but the time it would take him to destroy the cocaine.

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### **SEARCH & SEIZURE: PAT DOWN**

Sergeant Kinchen was working off duty in a known drug area when he was approached by a citizen who told him that drugs were being sold at a certain apartment. When the officer arrived at the apartment, he saw the defendant Enich sitting on milk crates on the second floor of the building next to the apartment.

Before the officer could approach, Enich made a “bee-line” to the end of the hallway where there was debris. “Bee-line” was explained as Enich jumping up and quickly walking to the end of the hallway. The officer described Enich’s actions as “strange”.

When Enich reached the end of the hallway, he “knelt down, and turned into the garbage, to like conceal himself.” The officer testified that the defendant was “crouching under the shirt he was wearing” and “putting stuff down in the hallway.”

Becoming alarmed by Enich’s actions, the officer asked Enich to approach. Enich approached and started “stuttering and shaking all over the place” when questioned. The officer decided to pat Enich down for safety purposes. The officer felt an object that felt like a gun. The officer removed a gun and arrested him for carrying a concealed firearm.

Enich argued that the officer did not have a reasonable suspicion for a pat down.

The Third DCA in **Enich v. State** held that the totality of the circumstances, including the fact that an experienced police officer was in a high crime area when he was informed that the

defendant was selling drugs, suspicious and furtive movements by the defendant and the defendant’s shaking and stuttering speech justified the pat down.

“Although we recognize that several of the factors taken alone would not justify the pat down search... the totality of the circumstances... justified the pat down.”

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### **SCOOTERS AND SAFETY VIOLATIONS**

An officer had probable cause, based on prior encounters, to stop a suspect for driving a scooter with a suspended license, even though he lacked probable cause to stop him for safety violations because the safety requirements did not apply to the scooter, the Fourth DCA said in **Stone v. State**, issued in October.

While on patrol, Officer Jefferey Bell spotted Michael Stone riding his Yamaha scooter. Knowing that Stone’s driver’s license had been suspended, Bell called out to Stone. Stone showed the officer his license, which had been reinstated the day before. Bell smelled alcohol on Stone’s breath and administered a field sobriety test, which Stone failed. The trial court denied Stone’s motion to suppress the sobriety test, reasoning that the officer had probable cause to stop Stone for not wearing a helmet and eye protection. Stone appealed, arguing that the stop was illegal because the statutory safety requirements did not apply to his scooter.

The DCA agreed that the safety requirements did not justify the stop, but nevertheless found



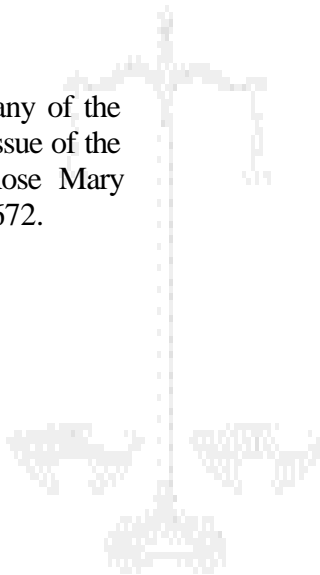
the stop to be lawful based on Stone's earlier license suspension.

"Bell's hailing Stone was a permissible traffic stop because Bell had probable cause to suspect Stone was committing a traffic violation by driving his scooter with a suspended license.

As a result, the trial court did not err by denying Stone's motion to suppress the sobriety test evidence and we affirm."

**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.





# Gator Fire Council

Firefighters Hall, Suite A  
1220 N.E. 8th Ave. • Gainesville, FL 32601  
Phone (352) 377-2157 • Fax (352) 373-7569



December 2003

The Fourth Annual Firefighter's Ball will be held this year at the Paramount Resort and Conference Center on Friday, February 13, 2004. We would like to extend an invitation to you to join us for this festive event that benefits the Southeast Burn Foundation and raises funds to send pediatric or teen burn survivors to Camp Amigo, the Foundation's summer camp.

From 5:30-6:30 a silent auction and one hour open bar happy hour will be enjoyed. Beginning at 7:00pm a southern buffet will be served followed by a program and dancing until 11:00pm.

The EMS and Firefighters of the Gator Fire Council, which consists of members from Alachua, Bradford, Clay, Columbia, Levy, Marion and Putnam Counties, ask that you consider supporting our cause by:

1. Sponsoring a table at the Firefighter's Ball for \$500. This includes a table of 8 for dinner and a \$100 donation to the Southeast Burn Foundation. A list of sponsors will be published in our program as well as a table designated to your organization.
2. Becoming a Patron by donating \$100 to help send a child burn survivor to Camp Amigo. A list of Patrons will be published in our program.
3. Attending the Firefighter's Ball. Tickets are \$50 per person. If you are employed by the following: Fire, EMS, Forestry, Law Enforcement, Emergency Dispatch or Shands Burn Center at the University of Florida, the cost is \$35 per person.
4. Of course, contributing any amount would be greatly appreciated. Please make checks payable to: Gator Fire Council, and, remember, all donations are tax deductible.

Every day, our firefighters put their lives on the line for our community. I am hoping that you will be able to honor their work and support them in their endeavor to help those who are burn victim survivors.

With sincere wishes for a happy, healthy, holiday season, I am,

Gratefully,  
*Nettie Maguire*  
Nettie Maguire  
Chairperson, 4<sup>th</sup> Annual Firefighter's Ball