



OFFICE OF THE STATE ATTORNEY, TENTH JUDICIAL CIRCUIT

Legal Advisor

HOW DO PROSECUTORS DECIDE WHEN TO SEEK THE DEATH PENALTY

BY JOHN AGUERO



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STATE ATTORNEY

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Misdemeanor	534-4926
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Victim Assistance	534-4989
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Florida's death penalty statute revolves around the existence or absence of aggravating factors. Law enforcement officers and civilians often think that if a defendant is convicted of premeditated murder, he or she can always get the death penalty. That is not true.

Section 921.141, Florida Statutes, governs the determination of whether a case is a death penalty case. (Note: Section 921.142 and Section 893.135 govern capital drug trafficking charges which are not addressed by this article.) In Section 921.141 there are 14 aggravating factors that may be used to justify imposition of the death penalty. If the State is unable to prove any of these aggravating factors, the State cannot seek the death penalty.

The 14 factors which may warrant the death penalty are:

- the defendant has previously been convicted of a felony and is under sentence, or on probation or community control
- the defendant has previously been convicted of a capital or violent felony
- the defendant knowingly created a great risk of death to many persons
- the defendant committed the murder during the course of a violent felony listed in the statute

- the defendant was trying to avoid or prevent a lawful arrest or effect an escape from custody
- the homicide was committed for pecuniary gain
- the homicide was committed to disrupt or hinder enforcement of the laws or a governmental function
- the homicide was especially heinous, atrocious, or cruel
- the homicide was committed with heightened premeditation
- the victim was a law enforcement officer engaged in his or her duties
- the victim was an elected or appointed public official and the homicide was related to the position of the victim

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SAO Birthdays

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HOW DO PROSECUTORS DECIDE WHEN TO SEEK THE DEATH PENALTY

MAY

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FELONY

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Diane Starke, 17th

MISDEMEANOR INTAKE

Theresa Henderson, 5th

JUVENILE

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ADMINISTRATION

Jerry Hill, 29th
Carolyn Blair, 31st



Assistant State Attorney John Aguero is the Homicide Division Director. He joined the State Attorney's Office in October 1985 and became the Homicide Director in 1988.

cluded from seeking the death penalty for anyone 16 years of age or younger at the time of the crime. The United States Supreme Court has determined this to be prohibited by the Constitution because it is "cruel and unusual punishment."

Once the State makes a decision that a person is eligible for the death penalty, we have a committee in our office which decides if we will seek the death penalty. The committee is comprised of State Attorney Jerry Hill, the prosecutors in the homicide division, and the investigator in the homicide division. Besides looking at what aggravating factors we can prove, the committee also looks at the nature of the crime, the history of the defendant, what mitigating factors we know to exist, the desires of the victim's family, and any other relevant factors, before deciding whether or not to seek the death penalty.

As you can see from the foregoing, there are some very rigid rules that govern the determination of whether to seek the death penalty. Our office seeks the death penalty in less than fifty percent of first degree murder cases.

- the victim was less than 12 years of age
- the victim was particularly vulnerable due to advanced age or disability
- the homicide was committed by a criminal street gang member

In spite of the existence of one or more of these factors, the State is pre-

...FROM THE COURTS...

TRAFFIC STOP LASTED TOO LONG

In this Polk County case, the defendant was charged with trafficking in amphetamine, possession of cannabis, and possession of paraphernalia, and she filed a motion to suppress. The facts on which the motion was based were that officers stopped a vehicle in which the defendant was a passenger. They had been following the car because they had received a report that its owner was involved in drug activity. However, the stop was for careless driving. The officers then detained the driver and

the defendant for seventeen minutes waiting for a drug detection dog to arrive. Once the dog arrived, it alerted for drugs. The trial court denied the motion to suppress, and the defendant was convicted as charged. On appeal, the Second District reversed, holding that officers may not detain a vehicle during a traffic stop for longer than is necessary to prepare a citation. *Nulph v. State*, 28 FLW D704 (Fla. 2d DCA March 13, 2003).

...FROM THE COURTS...

SEARCH EXCEEDED SCOPE OF CONSENT

The defendant was charged with possession of cocaine and filed a motion to suppress. The facts on which the motion was based were that during a consensual encounter, an officer asked the defendant for permission to search his person. The defendant responded, "Okay." During the search which ensued, the officer found a cigarette box in the defendant's pocket. He opened the box and found that it contained crack cocaine. The trial court denied

the motion, and the defendant was convicted as charged. On appeal, the Fifth District reversed, holding that the officer's search of the cigarette box exceeded the scope of the defendant's consent because a reasonable person in the defendant's position would not have understood the officer's request to search to include sealed items. *Aponte v. State*, 28 FLW D720 (Fla. 5th DCA March 14, 2003).

TRAFFICKING AMOUNT OF CANNABIS CLARIFIED

The defendant was charged with trafficking in cannabis, and he filed a motion to dismiss, asserting that the state could not establish a *prima facie* case of guilt as to the element of the amount of cannabis involved. The facts on which the motion was based were that the amount of cannabis seized was more than twenty-five pounds but involved less than 300 plants. The trial court granted the motion, finding that the

trafficking statute required the seizure of in excess of 300 plants having a weight of more than twenty-five pounds. On appeal, the Third District reversed, holding that trafficking could be shown by the possession of either more than 300 cannabis plants or more than twenty-five pounds of cannabis. *State v. Castro*, 28 FLW D801 (Fla. 3^d DCA Mar. 26, 2003).

VICTIM'S FEAR SUPPORTED ROBBERY CONVICTION

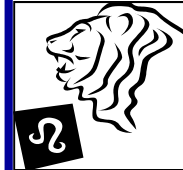
The defendant was charged with robbery. The evidence established that the defendant approached a teller trainee in a bank who was standing at a counter behind a thick bullet proof glass panel. The defendant told the teller that it was a hold up and that he wanted money. The teller testified that despite the bullet proof glass, she was deathly afraid and gave the defen-

dant money as he had ordered. The defendant was convicted as charged, and on appeal, the Fourth District affirmed, holding that the evidence satisfied the requirement that the state show that the taking of the money was accomplished by putting the victim in fear. *Magnotti v. State*, 28 FLW D809 (Fla. 4th DCA Mar. 26, 2003).

SEVERAL BLOWS MADE ONLY ONE BATTERY

The defendant was charged with, among other things, three counts of aggravated battery. The evidence at trial established that the three counts were based on attacks on the same victim, all of which occurred in the victim's home as part of one criminal episode. The defendant was convicted of three counts of battery. On ap-

peal, the Fourth District reversed two of the three battery convictions, holding that multiple battery convictions based on attacks on the same victim during one criminal episode violate the prohibition against double jeopardy. *Judd v. State*, 28 FLW D624 (Fla. 4th DCA March 5, 2003.)



LEO
NEWS...

National Police Week
May 11 thru May 17, 2003

During National Police Week, members of the Law Enforcement Community often wear black mourning bands on their shield or star on the 15th, and fly Blue Ribbons from their vehicle antennas during National Police Week to honor our Peace Officers.

The Highlands County Sheriff's Office will have a Peace Officer's Memorial Day ceremony on Thursday May 15, 2003 on the grounds of the Highlands County Courthouse at 9:00 a.m. This ceremony is to honor those we have lost in the line of duty and those who continue to risk their lives daily, including our "Peace Officers" at home and abroad. For more information, please contact Annette Daneau, Administrative Aide for the Highlands County Sheriff's Office at 863-402-7212.

The Virgil Hawkins Bar Association in cooperation with the Polk County Courts and the Polk County Sheriff's Office will be celebrating National Law Day on Thursday, May 1, 2003. Approximately 50 8th grade students from Bartow Middle School will participate in a mock trial. Other highlights of the day will include a tour of the PCSO Juvenile Boot Camp and K-9 demonstration; courthouse tour and observation of juvenile court; and "power lunch" with judges, lawyers, school and court personnel. For more information, contact Cassandra Denmark at 863-534-6351

Congratulations to **Dennis Roberts** of the Florida Highway Patrol on his promotion to Corporal.

Special Agent Wayne Porter, who is with the Florida Department of Law Enforcement, will be retiring in June. Congratulations on your retirement and thank you for all your years of service!

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For comments or suggestions, contact us at the above e-mail addresses.

TOP COPS



Detective Royce Adkins of the Polk County Sheriff's Office has been assigned to the liaison position in the Felony Intake Division of the SAO for the past 3 years. He follows in a long line of sergeants and detectives who have held this position for over twenty years. Detective Adkins is an advocate on behalf of the Sheriff's Office at the SAO. One of his duties is to make sure that the SAO receives a complete investigative file on each PCSO case so that the case has the best chance of being prosecuted. He works with detectives and deputies throughout the county to ensure their investigations are submitted in a timely manner. With a wealth of experience, Detective Adkins is able to assist investigators in improving the quality of their felony cases. Having reviewed over the years the documents detailing why cases can't be filed, Royce understands the common pitfalls that sometimes derail a successful prosecution. On occasion, through his efforts, a case that wasn't going to be filed ends up being filed after additional information is submitted supporting prosecution of the case.

Royce works with Mike Cusick of the Felony Intake Division to acquaint new detectives with the inner workings of the SAO and the procedures for filing felony cases.

Detective Adkins work doesn't end once the case is filed. He is often called upon by assistants in the Trial Division in a continuing effort to shore up the case by obtaining additional evidence or investigative information about the cases as they are prepared for trial.

Mr. Hill and his staff appreciate everything that Royce does to assist in the prosecution of Sheriff's Office cases. He carries on the tradition of maintaining a close working relationship between the SAO and the Polk County Sheriff's Office.

REMINDERS

1. Please remember that as a case nears trial, which is usually weeks or months after the case has been filed, our office must be able to locate witnesses or victims. It is important that investigating officers obtain as much information about the victims and witnesses in cases you submit to our office, such as complete names, dates of birth, race, sex, and other pertinent information. Please remember to include home addresses, mailing addresses (if they have a P.O. Box), or other "stable" addresses (such as a parent's mailing address) where these victims or witnesses may be contacted.
2. In cases involving multiple defendants, it is important that an original cost affidavit be prepared for each defendant. The affidavit should reflect the number of defendants and the total costs for the case. Without separate affidavits, we will not be able to seek investigative costs on co-defendants.