



OFFICE OF THE STATE ATTORNEY, TENTH JUDICIAL CIRCUIT

Legal Advisor

INVESTIGATING THE ELDER ABUSE/EXPLOITATION CASE

BY ANGELA COWDEN



JERRY HILL
STATE ATTORNEY

In light of the recent controversy surrounding the Department of Children and Families (DCF), the increased emphasis on investigative cooperation between law enforcement and DCF is not surprising. Your departments should, in the near future, be entering into agreements with DCF regarding the investigation of both child abuse and elderly abuse cases.

The Adult Protective Investigations Division of DCF for Polk County is located at the corner of U.S. Highway 17 and State Road 60 in Bartow. For Highlands and Hardee Counties, it is located at 930 SE Lakeview Drive in Sebring. The Adult Protective Investigators (API's) work from these locations and their records are maintained there. They are tasked with investigating complaints of abuse and exploitation of elderly or disabled adults.

The SAO opens a case file and begins to send monthly reminder letters to the agency of record to whom DCF has sent notification. Attached to the letter is a response sheet which should be checked by the investigating officer and returned to the SAO.

If you are the officer assigned to a criminal investigation of a crime against the elderly, before you begin an investigation, you should first determine whether the victim is included within the definitions of "elderly person" or a "disabled adult," found in F.S. 825.101.

IMPORTANT BARTOW

PHONE NUMBERS:

Table with phone numbers for various departments: Switchboard (534-4800), Misdemeanor Intake (534-4928), Domestic Violence (534-4985), Victim Assistance (534-4989), Felony Intake (534-4987), Felony Division (534-4834), Investigations (534-4804), Violation of Probation (534-4870), Child Abuse/Neglect (534-4857), Homicide Division (534-4959), On Call Pager (819-1526), Worthless Checks (534-4879), Juvenile Division (534-4905), FAX (534-4945), CHILD SUPPORT ENFORCEMENT (519-4744)

WITNESS MANAGEMENT:

Table with phone numbers for witness management: Misdemeanor/Traffic (534-4021), Felony (534-4020)

INSIDE THIS ISSUE:

PAGE:

Table listing article titles and page numbers: Investigating the Elder Abuse/Exploitation Case (...cont'd) 2, From the Courts 3, LEO News 3, 2003 MADD Florida Award for Outstanding DUI Prosecutor 4, From the Courts 4, From the Courts 5, SAO April Birthdays 5, TOP COPS 6, Cost of Investigation Affidavits 6

...CONTINUED FROM PAGE 1...

INVESTIGATING THE ELDER ABUSE/EXPLOITATION CASE



Angela Cowden is an Assistant State Attorney specializing in Economic and Environmental Crimes. She has been with the State Attorney's Office since April 1994.

the two types of investigations you may be called upon to do - abuse and exploitation.

The investigation of an abuse case is governed by F.S. 825.102, abuse, aggravated abuse and neglect, 825.1025, lewd or lascivious offenses against an elderly person or disabled adult, and 782.07(2), manslaughter of an elderly person or disabled adult. Probably the most difficult of these crimes to prove is the neglect by culpable negligence, F.S. 825.102(3). In cases like this you must have evidence that the suspect was responsible for the care and maintenance of the victim and failed to provide that care. The Florida Standard Jury Instructions in Criminal Cases defines "culpable negligence" as a "course of conduct showing reckless disregard of human life or of the safety of persons exposed to its dangerous effects or such an entire want of care as to raise a presumption of conscious indifference to consequences, or which shows wantonness or recklessness..." In other words, if you are thinking of charging an individual under this statute, you should have conduct which can be corroborated by witness testimony as willful neglect or refusal to care for the elderly person despite the suspect's position as caregiver, as well as a doctor's report indicating neglect. If you are unsure as to the criminal nature of the conduct or lack of conduct, feel free to call me at the Economic Crime Division at 534-4804.

For investigations of lewd acts, the victim's lack of capacity to consent is of vital importance. You should obtain the victim's medical records to prove the lack of capacity. Contact the victim's physician and ascertain how long the victim has lacked capacity. Realize that you are dealing with adults, and what may be automatically a lewd act on a child is not necessarily so on a consenting adult. Therefore, the adult must either be able

to testify as to the lack of consent or you should have a doctor who can testify as to the victim's lack of capacity to consent.

An exploitation case is governed by F.S. 825.103 and can be proved in the alternative. Subsection 1(a) defines exploitation as theft from an elderly person or disabled adult by abusing a position of trust and confidence or a business relationship. Subsection 1(b) defines exploitation as theft from an elderly person or disabled adult by someone who knows or reasonably should know that the person lacked capacity to consent.

Because an exploitation case can get especially complex, it is a good idea to keep things organized. The State has the burden of proving the case beyond a reasonable doubt at trial and must prove every element of the crime charged. Therefore, my office has Case Filing Checklists for Elderly Exploitation Cases available for you to use. They should be sent out with the initial letter that goes to law enforcement at the beginning of an exploitation case. Follow the suggestions on the checklist to be sure you have evidence to prove each and every element of the exploitation case. Please call Angela Cowden's office at 534-4804 and request a copy of the Checklist if you need one.

Many times, the API will have taken into his/her custody things such as bank records, checkbooks, lists of medicines, even medical records. You should ascertain what evidence has been gathered by the API so you don't go about re-inventing the wheel! Also, remember that you may use the power of the State Attorney to subpoena bank records, telephone records, medical records, just about anything you need to prove your case. Again, if you are uncertain as to what records might be essential to prove your case, do not hesitate to contact me in the Economic Crime Division at 534-4804.

meet the definition of an elderly person. She is not "suffering from the infirmities of aging." If, however, she is just one of 30 people in her retirement community who were victimized by a con man who targeted older people and she just happens to be in good shape while most of the other victims suffer from infirmities of aging, she may very well be a victim in your scheme to defraud/elderly exploitation investigation!

One of the first people you should contact is the API. The investigator's handwritten notes of visits and conversations with the victim will be very helpful to you as well as other information contained in the file. The exchange of information between law enforcement and DCF is extremely important for a proper criminal investigation. Obtain copies of the API's field notes and any evidence seized during the investigation. According to Florida Statute 415.107(3)(b), you are entitled to access to the API's reports. In fact, the API will become an essential witness in the state's case because of his/her interaction with the victim.

What follows are some general guidelines regarding

INVESTIGATING THE ELDER ABUSE/EXPLOITATION CASE

If you will notice, the language of the exploitation statute includes the definition of "theft." You should charge some version of theft along with the exploitation charge, because the jury can return guilty verdicts on both charges, even though we can only sentence on one because of double jeopardy restrictions.

Along the lines of exploitation, the legislation recently enacted a new statute called the "White Collar Crime Victim Protection Act" in F.S. 775.0844. Subsection 4 enhances the white collar crime to an aggravated level if the suspect has committed white collar crimes against at least 10 elderly persons and obtains at least \$50,000. The penalty for this crime is a first degree felony, ranked at a level 9, which packs a punch when it comes to sentencing! Read subsections 7 and 8 to see additional penalties.

A word about making arrests in exploitation cases: Unless the suspect is about to

flee or the victim is in danger of further injury from the suspect, don't make an arrest until you have your case complete. Waiting for records to be returned under subpoena can take weeks or even a couple of months. Once an arrest is made, the speedy trial clock starts ticking. You should be ready to turn your completed case file over to the SAO the day you get your arrest warrant. This is also helpful in the situation where, pursuant to F.S. 825.106, the state may move for speedy trial if the victim's age and health are such that the person may not be available at trial. We cannot make the motion if the investigation is incomplete!

Good luck with these investigations. The SAO supports your efforts to protect our elderly and disabled population. Central Florida's elderly population is always increasing and it is our duty to bring to justice those who commit crimes against people who are less able to protect themselves.



The State Attorney's Office would like to congratulate the following on their recent promotions:

LAKELAND POLICE DEPARTMENT

1. Bill LePere to Assistant Chief of Police
2. Greg Policastro to Captain
3. John Thomason to Lieutenant
4. Chuck Nissen to Sergeant

HARDEE COUNTY SHERIFF'S OFC.

1. Richard Dick to Captain
2. Claude Harris to Major
3. Arnold Lanier to Colonel.
4. Rosie Wendell to Road Patrol Lieutenant

WAUCHULA POLICE DEPT.

1. Mark Willis to Sergeant

ZOLFO SPRINGS POLICE DEPT.

1. Mark Gizas to Lieutenant
- Congratulations to Richard Chandler on his recent appointment as Zolfo Springs Police Department's, Chief of Police.
 - Sgt. Mike Castro retired from the Polk County Sheriff's Office on March 21 after having served more than 18 years. Thank you Sgt. Castro for all your years of service!
 - To all the men and women who have been called to active military duty, we at the State Attorney's Office would like to say thank you. We appreciate all you do for the Tenth Circuit and for our Country. And don't worry, all of your cases will be waiting for you when you return. We can change attorneys, but we can't prosecute without YOU!
 - ♦ If you have any LEO News you would like to share, please send to ldiaz@sao10.dsm.net.

...FROM THE COURTS...

OFFICER MAY ASK FOR ID DURING CONSENSUAL ENCOUNTER

The defendant was charged with possession of a controlled substance and filed a motion to suppress. The facts on which the motion was based were that an officer noticed the defendant parked at a gas pump. Being unfamiliar with the type of tag on the back of the defendant's car, he pulled up behind him. The defendant went over to the officer and when they engaged in conversation the officer noticed the smell of alcohol on the defendant's breath and that the defendant's eyes were glassy and bloodshot. The officer asked to see the defendant's license, and when the defendant gave it to him he saw that it was for business

purposes only. Because it was 5:00 am and the defendant said he was just driving around, the officer placed him under arrest. A search incident to the arrest produced the controlled substance. The trial court granted the motion, finding that the officer's pulling up to the defendant's vehicle amounted to a stop and that the officer had no right to ask for the license. On appeal, the Second District reversed, holding that the officer's act of pulling his car up to the defendant's was not a stop and that an officer may ask for a license as part of a consensual encounter. *State v. Christman*, 28 FLW D284 (Fla. 2d DCA Jan. 24, 2003).



Hope Pattey

Assistant State Attorney

Assistant State Attorney Hope Pattey has been selected to receive the 2002 MADD Florida Award for Outstanding DUI Prosecutor. ASA Pattey was nominated by the 2002 DUI Enforcement Unit Officers of the Lakeland Police Department for the Outstanding DUI Prosecutor Award. ASA Pattey was honored during the MADD Florida Recognition Weekend held March 23-24, 2003 in Tallahassee.

In his nomination letter, Sergeant Hans Lehman, DRE Agency Coordinator and DUI/DRE Instructor wrote "the Officers in the DUI Unit are truly grateful that we had the luxury of having an Assistant State Attorney that understands and cares about the importance of DUI Prosecution and what her efforts mean to the Community and the VICTIMS of DUI."

Congratulations Hope!

...FROM THE COURTS...

OFFICERS DID NOT HAVE REASONABLE SUSPICION

The defendant was charged with possession of cocaine and filed a motion to suppress. The facts on which the motion was based were that two officers were conducting surveillance at a hotel after they received a citizen complaint about drug activity there. They saw the defendant park in the parking lot and then disappear from view for several minutes. When he returned and pulled out of the lot, the officers stopped him for three traffic violations. During the writing of the citations, the officers asked for consent to search the car. The defendant refused, and when asked why he was at the hotel he said it was to visit a certain person whom the officers knew to be involved in drug activity. Based on this the

police called for a canine unit and placed the defendant in the back of the patrol car. After five or ten minutes the defendant told the officers where drugs were in the car. The officers located the drugs and did a more thorough search which yielded a second package of cocaine. The trial court denied the motion, and the defendant was convicted as charged. On appeal, the Second District reversed, holding that because the police did not have a reasonable suspicion of criminal activity, the detention of the defendant after the citations were written was illegal and thus his consent to search the car for the drugs was involuntary. *Bludsaw v. State*, 28 FLW D566 (Fla. 2d DCA Feb. 28, 2003).

ALTERING D.L. NUMBER IS A CRIME

In this Polk County case, the defendant was charged with unauthorized possession of a driver's license in violation of section 322.212, Florida Statutes. She filed a motion to dismiss, asserting that the state could not establish a *prima facie* case. The facts on which the motion was based were that the defendant was found to be in pos-

session of two driver's licenses on which the license number was altered. All the other information on the license was correct. The trial court granted the motion, but on appeal, the Second District reversed, holding that the alteration of the license number was sufficient to support the charge. *State v. Koczwarra*, 28 FLW D459 (Fla. 2d DCA Feb. 14, 2003).

OFFICERS FOLLOWED CORRECT PROCEDURE IN QUESTIONING DEFENDANT

The defendant was charged with murder, sexual battery, and grand theft and filed a motion to suppress his confession. The facts on which the motion was based were that while the defendant was being held in North Carolina on unrelated charges, two Florida officers attempted to question him about a Florida murder. They read him his *Miranda* rights, and he asked for an attorney. They then left the room to make arrangements for an attorney. When they returned, the defendant asked them what kind of questions they wanted to ask. They told him they could not speak to him

because he had requested counsel. He responded that since he could stop talking to them at any time, he now wanted to talk. They then read him his *Miranda* rights again, and he confessed. The trial court granted the motion, but on appeal the Fifth District reversed, holding that where a defendant reinitiates contact after invoking his *Miranda* rights and is again read those rights and waives them, his subsequent statements are admissible against him. *State v. Blackburn*, 28 FLW D534 (Fla. 5th DCA Feb. 21, 2003).

...FROM THE COURTS...



COMBINING DRUGS HURT TRAFFICKING PROSECUTION

In this Polk County case, the defendant was charged with armed trafficking in methamphetamine. At her trial, the evidence established that the officer who seized two baggies from the defendant did a Valtox test on the contents of each. Both tests were positive for methamphetamine. The officer, without weighing the two baggies, poured them together and sent them to the lab for testing. There the chemist found the weight to be 21.4 grams and the

substance to be methamphetamine. The defendant was convicted as charged. On appeal, the Second District reversed and reduced the conviction to armed possession of methamphetamine, holding that because there was no evidence as to the separate weights of the baggies or what each contained before mixing other than a Valtox test, the evidence was insufficient to establish a trafficking weight. *Smith v. State*, 28 FLW D332 (Fla. 2d DCA Jan. 29, 2003).

APRIL

HIGHLANDS COUNTY

Donna Smith, 17th
Heather White, 29th
Carol Atwell, 30th

CHILD SUPPORT ENF.

Missy Prevatt, 14th
Maria Zucker, 24th
Angie Harmon, 27th

BROOMSTICK CAN BE A DEADLY WEAPON

The defendant, a juvenile, was charged with aggravated battery under a principal theory. At his trial, the evidence established that his co-defendant beat the victim with a three foot broomstick. The

defendant was found guilty, and on appeal, the Third District affirmed, holding that a broomstick can be a deadly weapon. *E.M.M. v. State*, 28 FLW D443 Fla. 3d DCA Feb. 12, 2003).

FELONY INTAKE

Joe Williams, 9th

FELONY

Dave McNeal, 29th

STATUTE PROHIBITING UNLAWFUL USE OF POLICE BADGE IS CONSTITUTIONAL

The defendant, an ex-employee of the Pinellas County Sheriff's Office was charged with unlawful use of police badge or other indicia of authority in violation of section 843.085, Florida Statutes, for wearing a black tee shirt with a star and the words Sheriff and Pinellas County Sheriff's Office printed on it and for displaying a Sheriff's Office identification card. She filed a motion to dismiss the charge, assert-

ing that section 843.085 was unconstitutional. The trial court denied the motion, and the defendant was convicted as charged. On appeal, the Second District affirmed, holding that section 843.085 is not unconstitutionally vague and does not violate substantive due process. *Sult v. State*, 28 FLW D568 (Fla. 2d DCA Feb. 28, 2003).

INVESTIGATIONS

Terry Bergum, 16th

VOPS

Christy White, 23rd

SPECIAL PROSECUTION

John Berndt, 18th

DEFENDANT DETAINED TOO LONG

In this Polk County case, the defendant was charged with possession of methamphetamine and marijuana and filed a motion to suppress. The facts on which the motion was based were that an officer stopped the defendant for a broken headlight. The officer gave the defendant a citation and then asked for permission to search the vehicle. At first the defendant consented, but then he withdrew his con-

sent. As a result, the officer stopped his search and called for a canine unit. When the search dog arrived, it located the drugs in the vehicle. The trial court denied the motion to suppress, but on appeal the Second District reversed, holding that once the officer completed writing the citation, the continued detention of the defendant was illegal. *Sparks v. State*, 28 FLW D284 (Fla. 2d DCA Jan. 22, 2003).

DOMESTIC VIOLENCE

Traci Krzyzaniak, 14th

JUVENILE

Mark Levine, 14th

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

TOP COPS

Detective Ron Carpenter of the Polk County Sheriff's Office has been assigned to the Liaison position in the Child/Sex Abuse Division of the SAO for the past 2 ½ years. The position was created by the Sheriff's Office to provide follow-up support to detectives in the Special Victims Section and to assist the State Attorney's Office with interviews on cases involving physical and sexual abuse of children.

When he's not assisting prosecutors, he gathers reports from across the United States, locates witnesses and photographs crime scenes. He also conducts controlled telephone calls, writes reports, obtains interviews of suspects (sometimes resulting in confessions), takes taped statements of witnesses who surface after the filing of the initial report, prepares and executes search warrants, and provides support to victims' families during trials. In general, he does whatever it takes to ensure that cases submitted by the Sheriff's Office have the best possible chances at trial. During his time as Liaison, **Detective Carpenter** has gone above and beyond what is required of him and facilitated the prosecution of many difficult cases.

In recent weeks, **Detective Carpenter** has been instrumental in shoring up several cases involving suspects accused of multiple acts of sexual abuse upon children in Polk County. One case in particular involved a report of an elderly man who molested a twelve year-old member of a family he befriended in the late nineties. During the Sheriff's investigation, the victim, who is now a young adult, resisted law enforcement efforts to obtain corroborating evidence against the suspect because of clear emotional trauma. **Detective Carpenter** traveled to Orlando with the SAO to interview the young victim and was successful in reassuring him and gaining his trust. By the end of the meeting, the victim trusted law enforcement enough that he agreed to place a controlled telephone call to the suspect. During the recorded call conducted under the direction of **Detective Carpenter**, the suspect made several incriminating statements, providing much needed corroborating evidence.

Following the controlled phone call, **Detective Carpenter** spent many weeks battling with New York authorities over confidentiality laws in order to obtain information relating to a prior conviction of the suspect on similar allegations of sexual abuse in the early eighties. **Detective Carpenter** was successful in obtaining the reports from New York which enabled the SAO to locate the prior victims and secure valuable similar fact evidence. Because of **Detective Carpenter's** efforts, a case which would have likely gone un-prosecuted now presents a solid chance at conviction.

Detective Carpenter never ceases to amaze the Child Sex/Abuse Division with his success at strengthening the many cases submitted by the Special Victims Section of the Sheriff's Office. We are grateful for his service to the Sheriff's Office and the victims of these most serious offenses.

COST OF INVESTIGATION AFFIDAVITS MUST BE SUBMITTED FOR EACH DEFENDANT

Many departments are filing cost affidavits seeking reimbursement from defendants for the cost of investigation. Where two or more defendants are charged in the same case, it is important that a cost affidavit be prepared for each defendant. The affidavit should also identify the number of defendants involved in the case and the total investigative costs for the case. We are required to file an original cost affidavit

on each defendant at the time of sentencing in order for the court to order the defendant to pay for the costs of investigation. As a result, we must have an original affidavit for each defendant and it must 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.*