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VOLUME XXV, ISSUE IX

March 2012

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Exploitation**

From the Courts

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Investigating Elderly Exploitation

Written by: **Nicole Orr: Assistant State Attorney**

This article expands upon articles written by Judge Angela Cowden (March 2003) and ASA Darla Dooley (December 2009).

DCF is tasked with investigating abuse and exploitation of elderly and disabled adults. The Adult Protective Investigations Division of DCF handles such investigations. When the Adult Protective Investigators (API's) work is complete and they have closed their cases with indications of abuse or exploitation, DCF is required to notify and send copies of its case synopsis to both law enforcement and the State Attorney's Office (SAO). At the SAO those reports from DCF are sent to the Economic Crimes Division. The SAO opens a case file and sends reminder letters to the law enforcement agency of record in the DCF file. Attached to the letter is a response sheet that should be filled out by the investigating officer and returned to the SAO. When the investigation is complete, the response sheet should again be returned to the SAO and attached to the response sheet should be a copy of your charging affidavit or a copy of your report detailing your reasons for declining to file charges.

When you receive the notification and case synopsis from DCF and begin your investigation one of the first persons you should contact is the API. You should obtain copies of the API's field notes and any evidence seized during the investigation. The report/case synopsis you receive from DCF does not include the API's field notes. The API will become an essential witness in the case because of the API's interaction with the victim. However, always keep in mind that your duties and DCF's duties are different and you should never rely on the determinations they make in their reports. Florida Chapter 415 governs DCF and the guidelines differ greatly from Chapter 825 governing law enforcement.

Florida Chapter 825 covers Abuse, Neglect, and Exploitation of Elderly Persons and Disabled Adults. When beginning your investigation it is very important



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has been with our office for nine
years.*

to determine whether your victim is covered by chapter 825. Florida Statute Section 825.101 defines many important terms contained within Chapter 825. You must use these definitions during your investigation. Your first determination must be whether the victim is included within the statutory definition of "elderly person" or "disabled adult." Please remember that DCF does not use the same definitions during their investigation and therefore you cannot rely on DCF's report. Pursuant to F.S. 825.101(4) "Elderly Person" means a person 60 years of age or older who is suffering from the infirmities of aging as manifested by advanced age or organic

brain damage, or other physical, mental, or emotional dysfunction, to the extent that the ability of the person to provide adequately for the person's own care or protections is impaired." Pursuant to Section 825.101(3) "Disabled Adult" means a person 18 years of age or older who suffers from a condition of physical or mental incapacitation due to a developmental disability, organic brain damage, or mental illness, or who has one or more physical or mental limitations that restrict the person's ability to perform the normal activities of daily living." If you determine that your victim falls under one of these definitions you must collect medical record evidence to support that determination. You must not only collect the medical records but you must also identify a physician of the victim who will testify as to the physician's opinion of the victim meeting the statutory criteria. If the victim does not meet the criteria of an "elderly person" or a "disabled adult" that does not mean that they were not the victim of a crime, it just means that it does not fall under Chapter 825.

Financial exploitation is found in F.S. 825.103 and there are some simple questions to ask when determining if it is an appropriate crime to charge. 1) Is the victim's age sixty or above? If yes, 2) Is the victim suffering from the infirmities of aging? If the answer to either of these questions is no, you do not have exploitation, but please look to other possible crimes.

After you determine your victim is an “Elderly Person,” you must determine whether your victim has or had the capacity to consent. Again, you cannot rely solely upon the determinations made by DCF. If your victim has or had capacity to consent, 1) was the defendant in a position of trust and confidence or was there a business relationship? If yes to either one, 2) was the crime committed knowingly by deception or intimidation? If yes, 3) did the defendant obtain or use, or endeavor to obtain or use funds, assets, or property with the intent to temporarily or permanently deprive your victim? If yes, then you have exploitation. If your answer was no to any of those questions you do not have exploitation, but please look for other crimes.

If your victim did not have the capacity to consent then you ask: 1) did the defendant know or should the defendant have known that the victim lacked capacity. If yes, 2) did the defendant obtain or use, or endeavor to obtain or use funds, assets, or property with the intent to temporarily or permanently deprive your victim? If yes, you have exploitation. If your answer was no to either of those questions you do not have exploitation, but again please look to other possible crimes.

When first reviewing a complaint here are some exploitation indicators: unexplained withdrawals from accounts, disparities between assets and lifestyle, sudden inability to pay bills, purchase food, or personal care items, loans of large sums of money, recent beneficiary designation changes, new powers of attorney, recent amendments to wills, new caregivers or unusually large payments for services. Please remember that a power of attorney does not preclude a crime from being committed. Exploitation cases may include breaches of fiduciary relationships, such as the misuse of a power of attorney or unauthorized taking of personal assets. They may also include misappropriation, misuse, or transfer of monies or the intentional or negligent failure to effectively use an elderly person’s income for necessities required for the person’s support or maintenance.

Exploitation cases can get very complex and document intensive. Please keep things organized; it will make your presentation of the case much more effective. Please remember that you may use the power of the State Attorney to subpoena bank records, medical records, investment account records or any documents you need to complete your investigation and prove the charge of exploitation. Please do not make an arrest until your investigation is complete and you have all of your supporting documentation, unless the suspect is about to flee or the victim is in immediate danger from the suspect. Subpoenaing records, particularly some fi-

nancial records, can take weeks and sometimes months to receive a response. As you well know, once the defendant is arrested the speedy trial clock starts and waiting on records will become an issue. The day you received your arrest warrant, be prepared to turn over your completed case file to the Economic Crimes prosecutor.

Please remember you are a mandatory reporter for abuse. Therefore, if you receive a case from any source, other than DCF, you must call the Abuse Hotline to report and document the abuse.

The SAO has Case Filing Checklists for Elderly Exploitation available for your use. Follow the suggestions on the checklist to be sure you have sufficient evidence to prove each and every element of the crime. The checklist may prompt you toward an area of the investigation you might have not considered. If you have any questions regarding Elderly Exploitation or Economic Crimes please do not hesitate to contact the Economic Crime Division at 534-4804.

PLEASE LIST CO-DEFENDANTS ON YOUR ARREST AND COMPLAINT AFFIDAVITS

It is important that you inform us upfront as to the names of co-defendants. While it is understandable that you may not know the name of the co-defendant when you charge the first defendant, clearly you will be able to list the name of the co-defendant when you charge the second defendant. We need to notify the Clerk’s Office of the names of the co-defendants so that their cases stay together and go to the same judge when the judicial division is being assigned. Therefore please make sure to list the names of the co-defendants on the arrest and complaint affidavits.

FROM THE COURTS...



<http://www.sao10.com>

Bartow Phone Numbers:

Switchboard	534-4800
Misdemeanor Intake	534-4927
Misdemeanor	534-4926
Domestic Violence	534-4861
Felony Intake	534-4987
Felony	534-4964
Investigations	534-4804
Violation of Probation	534-4803
Child Abuse	534-4857
Homicide	534-4959
On Call Phone	860-8243
Worthless Checks	534-4874
Juvenile	534-4905
Main Fax	534-4945
Witness Management	534-4021
Fax	534-4034

EVIDENCE SUPPRESSED WHERE CORRECT PROCEDURES WERE NOT USED TO OBTAIN MEDICAL RECORDS AND DOCTORS' STATEMENTS

The defendant was charged with doctor shopping and filed a motion to suppress doctor-patient contracts and statements from physicians obtained by law enforcement without warrant or subpoena during their investigation. The trial court granted the motion, and on appeal, the Fourth District affirmed, holding that the contracts and statements were subject to suppression because law enforcement failed to follow the procedures set out in section 456.057, Florida Statutes, in obtaining them. *State v. Sun*, 36 FLW D1149 (Fla. 4th DCA June 1, 2011).

FACTS SUPPORTED MANSLAUGHTER PROSECUTION

The defendant was charged with allowing an open house party, contributing to the delinquency of a minor, and two counts of manslaughter. She filed a motion to dismiss the manslaughter counts, asserting that the state could not establish a *prima facie* case of guilt. The facts on which the motion was based were that the defendant hosted an open house party at which minors consumed alcohol and other illegal substances. At some point during the party, one of the minors drove off in a motor vehicle with another one of the minors as his passenger. While driving he was involved in a crash which killed both him and his passenger. The trial court denied the motion, and the defendant went to trial where she was found not guilty of the manslaughter counts but guilty of the open house party and contributing counts. Notwithstanding the not guilty verdicts, she appealed the denial of motion to dismiss, asserting that if it had been granted, the circuit court would not have had jurisdiction over the other counts. The Fifth District affirmed, holding that the facts of the case supported a prosecution for manslaughter. *Santarelli v. State*, 36 FLW D1243 (Fla. 5th DCA June 10, 2011).

NO MATTER THE NUMBER OF GUNS OR AMOUNT OF AMMUNITION ONLY ONE CHARGE OF POSSESSION BY CONVICTED FELON IS PERMISSIBLE

The defendant was charged with four counts of possession of a firearm by a convicted felon and one count of possession of ammunition by a convicted felon. He filed a motion to dismiss in which he alleged that he had been found in possession of four firearms and ammunition at the same time. The trial court granted the motion, ruling that the state could file an amended motion charging one count of possession of a firearm and one count of possession of ammunition. On appeal, the First District affirmed in part and reversed in part, holding that based on the language of section 790.23, Florida Statutes, which prohibits the possession of "any firearm or ammunition" by a convicted felon, the state could only charge one count of possession of a firearm or possession of ammunition. *State v. Whaley*, 36 FLW D1247 (Fla. 1st DCA June 13, 2011).

Officers now can submit their vacation to Witness Management at the following email address:

witmanagement@sao10.com

The "Legal Advisor" is published by:
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