

STATE ATTORNEY'S OFFICE

EIGHTH JUDICIAL CIRCUIT
WILLIAM P. CERVONE, STATE ATTORNEY

Legal Bulletin 2007-02
Editor: Rose Mary Treadway

May 2007

A MESSAGE FROM

BILL CERVONE
STATE ATTORNEY

We really didn't need this reminder. The death of GPD Lt. Corey Dahlem in early April comes roughly six years after that of GPD Officer Scott Baird and not five years after that of Union County Deputy Sheriff Renee Azure.

Ironically, all three of these officers were killed in traffic crashes while they were in the line of duty. The public perception of the dangers inherent in law enforcement usually focuses on shootouts with armed suspects, perhaps in a robbery or a domestic context. The reality is that the more mundane responsibilities of duty, such as traffic control, are just as dangerous if not more so. Maybe that's because the danger comes out of nowhere and can't be anticipated or prepared for. The result, of course, is the same and we are at no less a loss for words than we would be if

something else had taken these people from us. I knew Corey well, far better than I did Scott or Renee, and that brings a more personal sense of the loss our law enforcement community has suffered. He was not just someone in uniform that I might work with now and then, he was a friend to me as he was to so many at GPD and elsewhere and as were Scott and Renee.

The reminder his death brings is, of course, not just how transient life is for all of us but, more importantly, how vulnerable each of you who serve is to something inexplicable, and, as a result, how important it is that each of us care for and take care of each other in the increasingly dangerous society where we live and work. This year's law enforcement memorials in May will be all the more poignant and meaningful for this reminder.

Please be safe out there.

SAO PERSONNEL CHANGES

Long time ASA JAY WELCH retired in February after 24 years of service. Jay's position as chairman of the Environmental Taskforce has been assumed by ASA DAVID KREIDER.

SAO Chief Investigator PAUL USINA also has retired after 14 years of service to the SAO. His position has been assumed by Investigator SPENCER MANN.

On April 1, SEAN EATON joined the SAO. He is assigned to County Court in Gainesville. Previously, Sean was a prosecutor with the SAO in Ft. Lauderdale.

On May 1, DARLA WHISTLER joined the SAO. Her assignment will be in Levy County Felony starting in June, where she will be filling in for ASA ANDREA MUIRHEAD while Andrea is on sabbatical teaching in Holland until the end of the year. Darla previously prosecuted in the Tampa SAO.

CONGRATULATIONS!

Congratulations and welcome to Chief JACK DONADIO, who assumed command of the newly created Hawthorne Police Department on March 12. Chief Donadio comes from Oneida, New York, and will have an anticipated three man force to start.

GPD's KEITH KAMEG has been promoted to Lieutenant; BRAD LITCHFIELD to Sergeant; and MIKE SCHENTRUP, ISADORE SINGLETON and CAROL DAVIS to Corporal.

The Chiefland Police Department has promoted JIMMY ANDERSON to Captain.

Captain MIKE BURNETTE has retired from the Bradford County Sheriff's Office.

Captain CHUCK BASTAK has retired from the Levy County Sheriff's Office after 30 years of service to that agency.

Levy County Sheriff Office has announced the following promotions: CARL ROGERS to Sergeant, KERRY RUNNELS to Corporal, BRIAN MARRA to Corporal, EVAN SULLIVAN to Lieutenant, and DANNY RIFFLE to Captain.

Lt. DON DENNIS retired from GPD in January after 30 years of service.

Alachua County Sheriff's Investigator FARNELL COLE retired in May.

TIM BIBLE has been named the new Chief of Police of Inglis.

On May 3, the following awards were presented by the Baker County Sheriff's Office: Explorer of the Year, BOBBY KELLY; Communications Officer of the Year, TRACEY

RIGNEY; Correctional Officer of the Year, Detention Deputy ANGELA MORRIS; Joseph Burtner Award, Sgt CHARLES ROSS and DEPUTY TONY NORMAN; and the Morris Fish Award, Deputy WAYNE LIMBAUGH.

LAW ENFORCEMENT MEMORIAL

The Alachua County Law Enforcement Memorial Service will be held at 6 pm on May 23 at the Memorial Park off Tower Road in Gainesville.

FLORIDA CASE LAW

METH AND THE PROTECTIVE SWEEP

The Tri-County Drug Task Force learned from two people (Garrison and Hines) who were involved in the manufacture of methamphetamine that William Kennedy was also manufacturing meth; that Garrison and Kennedy were involved in a "feud" over the theft by Kennedy of anhydrous ammonia, a chemical used to make meth; and that Garrison had intended to place a bomb in Kennedy's house in Levy County.

Task force members went to Kennedy's house. Although they had no reason to believe that a bomb had actually been placed or "exigent circumstances" to support going onto Kennedy's property, they went to his house both to warn Kennedy of the threat and to investigate the possibility that Kennedy was manufacturing meth.

Kennedy's yard was not fenced, although it may have been posted with "no trespassing" signs. As the task force leader approached the front door, he smelled odors of anhydrous ammonia and ether, which he knew were consistent with the manufacture of meth. Based upon those odors, the leader arrested Kennedy as soon as he opened the front door.

The leader then told Kennedy of the bomb plot. Because the task force had been led to believe that another individual was involved in helping Kennedy make meth, they conducted a "protective sweep" of the house. There was evidence of a meth lab inside the house. At that point, the house was secured and the leader went to obtain a search warrant.

Kennedy argued that his Fourth Amendment rights had been violated because the officers went onto his property without either a warrant or "exigent circumstances." He argued that the real reason they entered was to investigate the possibility that he was manufacturing meth, and the bomb threat was a mere pretext. The trial court agreed and suppressed the evidence.

The First DCA in State v Kennedy reversed the lower court's suppression of the evidence, ruling that law

enforcement were lawfully on the property and the odors of anhydrous ammonia and ether detected as they approached the front door provided probable cause for Kennedy's arrest and the ensuing protective sweep of the house.

"Fourth Amendment rights were not violated when law enforcement personnel crossed the unenclosed front yard to reach the front door." This was so regardless of whether the property was posted with "no trespassing" signs. "Under Florida law it is clear that one does not harbor an expectation of privacy on a front porch." Further, the odor of anhydrous ammonia and ether provided probable cause to arrest the defendant. The officers' subjective motivation was irrelevant. The test is an objective one—would a reasonable officer have acted the same way, given all of the circumstances.

Finally, post-arrest protective sweeps of spaces outside the immediate area of the arrest are permissible provided there exist articulable facts when, taken together with the rational inferences from those facts, would warrant a reasonably prudent officer in believing that the area to be swept harbors an individual posing a danger to those on the arrest scene. Here, the

information possessed by the task force indicated that another individual was involved in helping Kennedy make meth. It was clear that the sweep was appropriately limited and lasted no longer than necessary to dispel the reasonable suspicion of danger and clear the house of others, at which point the house was secured while a warrant was sought.

CONSTRUCTIVE POSSESSION AND PLAIN VIEW

After police conducted surveillance on one side of a duplex and noted the comings and goings of forty to fifty people over the course of an hour or so, a SWAT team served a search warrant via the front door of the residence using loud distraction devices. The twelve people in the residence all attempted to run out the back door at the same time. Three were able to run some distance from the house but were quickly caught.

The remaining nine, including Person, fell to the ground near the door and were easily apprehended. Police found a large quantity of cocaine in plain view in the common areas of the residence, including crack cocaine in various stages of processing in the kitchen, and some weapons. No drugs were found on Person, and none of the suspects were checked for

drug residue because a water pipe had burst in the process, leaving them all wet. There was no fingerprint evidence on any of the drug packages or weapons.

Person was convicted of Trafficking in Cocaine and subsequently appealed, arguing there was no constructive possession of the cocaine.

The Second DCA in Person v State reversed the conviction, agreeing that there was no constructive possession of the cocaine. "The State was required to prove that Person was able to exert control over the cocaine and knew that the cocaine was in his presence." The court stressed that mere proximity to contraband is not enough to establish dominion and control. Instead, the evidence must establish the defendant's conscious and substantial possession, as distinguished from mere involuntary or superficial possession of the contraband. Further, because any possession on the part of Person would have been nonexclusive, given that twelve people were in the residence, the control element cannot be inferred but must be established by independent proof.

Here no evidence was presented that the defendant had control over the cocaine.

No evidence showed that Person was the owner or an occupant of the residence, and therefore the ability to control the cocaine simply because it was in plain view in the common areas of the residence. In fact, the surveilling officer never saw Person enter the house but did see that Person stepped outside to see off a "visitor" and that he was in a pileup of nine people attempting to simultaneously flee through the back door when SWAT broke in. Although there was proof that he was in proximity to the cocaine, no evidence was presented to show a "conscious and substantial possession" and thus control.

Although evidence of flight is relevant to infer consciousness of guilt, here there was no necessary connection between Person's attempt to run out the back door and any control he may have had over the cocaine. Person's and the others' flight can be explained by the distraction devices used by the SWAT team, which created a scene of chaos according to one of the testifying officers. At worst, Person's flight can be taken as evidence that he was aware of the illegal activity taking place, but it does not necessarily imply that, among the twelve people in the house, he was able to exert control over the cocaine.

CONSENSUAL SEARCH AND REMOVAL
FROM THE AUTOMOBILE

Broward County Sheriff's Deputy Schneider stopped Boles for driving without operable taillights. After checking his license and registration, Schneider decided not to issue a citation. Although he did not suspect Boles of any criminal violations, Schneider asked if he could check the vehicle for narcotics or weapons. According to Schneider, Boles consented to the search.

The deputy then "had the driver, Mr. Boles, step out of the car." As Boles stepped out, he dropped a glass pipe from his right hand. The deputy recognized the pipe as drug paraphernalia. He seized the pipe, field-tested it for cocaine, and arrested Boles.

The trial court granted Boles motion to suppress, holding that the deputy had completed the purpose of the stop at the time he requested consent to search the vehicle, and thus the consent was mere acquiescence to authority and thus unlawful because it was not supported by reasonable suspicion.

The Fourth DCA in *State v. Boles*, reversed the trial court's order of suppression, holding that after the deputy returned Boles's paperwork, the traffic stop turned into

a citizen encounter and the deputy could legitimately ask Boles for consent to search and to be removed from his car. The court held that the consent to search the vehicle necessarily includes the removal of any persons in the vehicle in order to facilitate the search. The court cautioned that even though the search is consented to, the person may, thereafter, withdraw his consent and refuse to exit the vehicle. "Because Boles' exiting of the vehicle was merely part of the orderly search to which he consented, the drug paraphernalia was seized pursuant to a consensual search."

VEHICLE SEARCH AFTER ARREST
OF PASSENGER

Deputy U.S. Marshall Johnson was a member of the Fugitive Apprehension Strike Team, or FAST, a multi-agency task force charged with apprehending fugitives within 12 Florida counties. FAST had received a tip that fugitive Callaway had fled St. Augustine and relocated to a Jacksonville residence. There was an outstanding warrant for Callaway's arrest.

Deputy Johnson arrived at this residence for surveillance. After approximately 15-30 minutes, Manuel Gomez arrived driving a Chevy Impala. Gomez entered the residence and

then 15 minutes later exited with Callaway and another unidentified male. They entered the Impala with Gomez driving and Callaway in the front seat.

Deputy Johnson and other FAST members followed the Impala. Before the car could be pulled over, Gomez unexpectedly parked the car, and the unidentified passenger exited and entered a post office. Callaway was still seated in the front passenger seat. Gomez then exited the driver's side and started walking back toward Deputy Johnson's vehicle. Members of FAST, not knowing Gomez's intention, emerged from their vehicles and handcuffed both Gomez and Callaway.

Callaway was arrested after his identity was confirmed. Deputy Johnson confirmed there were no outstanding warrants for Gomez. The deputy further confirmed that Gomez did not own the vehicle but was in possession of it to perform detailing work for a friend.

The deputy performed a search of the passenger compartment of the Impala and discovered a small duffel bag on the floor board behind the driver's seat. Upon opening the bag, the deputy discovered marijuana, cocaine, a scale, and a t-shirt which was the same color, size, and had the same

advertising on it as the one Gomez was wearing. Gomez was arrested for drug possession. It was undisputed that Deputy Johnson did not have a warrant or consent to search either the vehicle or the bag.

The trial court granted Gomez's motion to suppress the evidence. The First DCA in *State v Gomez* reversed that suppression, holding that the U.S. Supreme Court decision in *New York v Belton* controlled. *Belton* held "that when a policeman has made a lawful custodial arrest of the occupant of an automobile, he may, as a contemporaneous incident of that arrest, search the passenger compartment of that automobile." Additionally, "the police may also examine the contents of any containers found within the passenger compartment, for if the passenger compartment is within reach of the arrestee, so also will containers in it be within his reach." This is a bright-line rule which does not depend on reasonable suspicion of criminal activity or probable cause. "This rule is based on the need to remove any weapons and to preserve any evidence that might be in the vehicle." As long as the arrest itself is lawful, no additional justification is required for a search incident to the arrest.

TERRY STOP AND THE DE FACTO ARREST Officer MacVane, while patrolling within the city limits, heard gunshots being fired and proceeded to an area from which he believed the shots originated, where he found Studemire and another man, Chappelle. They were standing in a driveway by a vehicle. There were bullet casings and shotgun shells on the ground.

Chappelle admitted to the officer that he was the person who fired the shots and produced a shotgun. Chappelle also acknowledged having other guns on the premises and consented to the officer's search of the house, where the officer found two more guns.

Additional officers arrived on the scene. One asked for Studemire's ID, to which he replied he had none. When the officer asked his name, Studemire gave a false name. The officer then asked him to ID himself, and, again Studemire gave a false name. After Officer MacVane confronted him, Studemire gave a second name, an alias under which he had been previously convicted. MacVane decided to detain Studemire, handcuffed him, and placed him in the back of his patrol car. The record is silent as to whether MacVane conducted a pat down of Studemire.

Other officers found an automatic handgun lying in plain view on top of the passenger side front tire of the vehicle. MacVane asked if the handgun had been discharged by Studemire. Studemire, who had been Mirandized, said yes and also admitted he was a convicted felon.

Studemire moved to suppress his statements made after he was cuffed and placed in the patrol car.

The Fourth DCA in *Studemire v State*, upheld his conviction, holding that there was clearly a legal TERRY stop. The question, the court said, was whether Officer MacVane's actions in placing Studemire in cuffs and placing him in the back of the car escalated the detention to a de facto arrest, for which probable cause is necessary.

The court said that the use of cuffs does not automatically turn an investigatory stop into a de facto arrest, where it is reasonably necessary to protect the officers' safety or to thwart a suspect's attempt to flee.

"Notwithstanding the possibility that Officer MacVane failed to frisk Studemire, the objective circumstances at the scene presented valid and reasonable concern for officer safety. Guns were

recently fired; there were multiple guns on the premises, some loaded; the other person at the scene acknowledged firing a shotgun; there were numerous, and a variety of, shell casings on the ground; at least one weapons offense had already occurred; and firearms matching the shell casings, other than the shotgun, had not yet been found. Patently, there was a realistic threat that other weapons were outside the house and the other officers were searching the area. Additionally Studemire was uncooperative and had already given two false names.

JIGGLING DOOR NOT INTENT FOR BURGLARY

In the early afternoon during school hours, a man watched two teenage boys walk down a residential street. J.A.S. was one of those boys. He was a former resident of the neighborhood and was frequently seen in the area. While the man watched the two boys through a window in his home, they walked up a driveway to the house across the street.

At the house, J.A.S. jiggled the garage door handle while the other boy went to the front door. Neither boy gained entry to the house. After shaking the handle for approximately five to ten minutes with his back to the street, J.A.S. turned around

and leaned against the garage door for another few minutes. While the neighbor continued to watch the boys, they stayed in front of the house for at least another ten minutes and then simply walked down the street. The boys did not run or appear excited. All of the boys' actions were done in broad daylight, in full view, and facing the street. Neither juvenile made an effort to conceal his actions or identity.

A few minutes later, a police officer arrived at the house in response to a signal from a burglar alarm. The neighbor who had seen the boys from across the street had not heard the alarm; therefore, he did not know when it began ringing. The police investigated the scene and discovered a sliding door that was partially open at the back of the house. The description of this door in the record is confusing, but it appears that no one could get through this door from the outside because there were large, visible burglar bars between the exterior screen door and the interior sliding glass door.

The owner of the home testified that J.A.S. had once lived next door to her but did not have permission to be in her house. The sliding door was normally locked from the inside with a bolt, and she believed that

the door had been pried open rather than inadvertently left open. She did not testify, however, that anyone had actually entered her home during this event.

No prints were recovered or other physical evidence was found to support a theory that the two boys had pried this door open. The neighbor who watched the boys only testified that they were in front of the house, approached the front door and garage door, and jiggled the garage door handle. Thus, there was no evidence J.A.S. had anything to do with the opening of the sliding door.

The defense had moved for a Judgment of Acquittal because the State had failed to prove the defendant had the intent to commit a crime. The trial court denied that motion.

The Second DCA in J.A.S. v State reversed the conviction, holding that the evidence lacked proof of either an intent to commit an offense on the property or the stealth necessary to employ the statutory presumption.

"In this case, the two boys did not sneak up to or run away from the house. Rather, in the middle of the afternoon in plain view, the boys approached the front entrance and garage door of a house in a residential neighborhood where any

passerby could observe their actions. In the house across the street, the neighbor observed them through his window for at least ten minutes. The evidence, as presented, did not directly connect them to any action that may have set off the burglar alarm and it did not place them near the door that was ajar in the back of the house."

"Thus, while we recognize that J.A.S.'s lingering in front of the garage door and rattling the handle was suspicious, the State did not establish a prima facie case of attempted burglary because it failed to present evidence of intent to commit an offense on the property or evidence of stealth.

CRIMINAL TRESPASS BY COPS NO BAR TO SUBSEQUENT SEIZURE

Wilson owned and lived on a 36 acre parcel of land in Lake County. A natural vegetative buffer makes it nearly impossible to see the interior of the property from its boundary lines, and a perimeter fence entirely surrounds the property except for a drive gate. The fence is primarily "rail" fencing, but one section of the fence is constructed of barbed wire. The drive gate, located near the front of the property, is usually kept closed. A "No Trespassing" sign is conspicuously displayed next to the gate.

Approximately 110 feet behind Wilson's residence is a greenhouse constructed of steel framing covered with semi-transparent plastic material. The greenhouse is only partially visible from the residence. There is no doorway in the greenhouse. Ingress and egress is accomplished by lifting the plastic side. The sides of the greenhouse are covered with nursery shade-cloth, which renders it difficult to see the interior of the greenhouse. Electrical power for the greenhouse is provided via an extension cord connected to Wilson's residence.

Approximately 10 days before Wilson's arrest, one of his neighbors entered his property to look for the neighbor's dog. At that time, the neighbor saw the greenhouse, which the neighbor believed contained marijuana. The neighbor notified law enforcement who began a surveillance of Wilson's property over the course of several days.

Because deputies could not see the greenhouse from the boundary of the property, they surreptitiously entered the property by climbing over the fence and traversing the property up to the greenhouse.

To view the contents of the greenhouse, it was necessary that the agents get very

close to the greenhouse and touch its exterior. They wore camouflage suits to avoid detection. On the first occasion of their entry to the property, the agents saw more than 200 marijuana plants in the greenhouse, which they were able to view through a two foot wide void in the covering on the greenhouse wall. After confirming that marijuana was growing in the greenhouse, the agents returned and entered the property on three more occasions over several days.

On the fourth occasion, they were detected by Wilson's dog. As Wilson was walking in the area of the greenhouse, his dog alerted to a deputy who was crawling on the ground. When Wilson and his dog got close to the deputy (Padgett), Deputy Padgett rose to his feet, identified himself as a law enforcement officer, pointed a gun at Wilson, ordered him to the ground and threatened to shoot the dog if Wilson did not control him. Padgett held Wilson at bay for several minutes until two other law enforcement officers arrived, at which time the agents instructed Wilson to get off the ground and keep his hands on his head. Wilson was "walked" to the front of his mobile home.

Once at the front of his mobile home, the agents told Wilson that they had reason

to believe he was growing marijuana. They advised him of his Miranda rights, which he waived, and they asked for permission to search his residence and greenhouse. Wilson agreed and executed a written form that permitted the agents to conduct the search, which revealed the contraband and firearm. Wilson was charged with possession of a firearm by a convicted felon and several drug related counts.

The Defendant appealed his conviction arguing that the agents infringed upon his Fourth Amendment rights by crossing his fence, traversing his field and peering into the greenhouse. The State responded that these actions did not amount to a violation of the Fourth Amendment because the agents never penetrated the curtilage of the residence based on the U.S. Supreme Court decision of United States v Dunn.

The Fifth DCA agreed with the State in Wilson v State and upheld the conviction pursuant to the Dunn decision.

In Dunn, DEA agents made three warrantless entries onto the Dunn's 198 acre ranch on two consecutive days by crossing over a perimeter fence that completely surrounded the property. Thereafter they walked one half mile, crossed several

barbed wire fences, climbed a wooden fence and peered into the barn using flashlights to view the interior of the locked barn, at which time agents saw an illicit drug lab. The barn, which was 60 yard from the defendant's residence, was not visible from the perimeter of the property because the clearing in which the barn was situated was completely surrounded by woods. The Supreme Court concluded that these actions did not constitute a Fourth Amendment violation because the barn was not within the curtilage of the residence. Therefore, the defendant did not enjoy the expectation of privacy in the area immediately outside the barn.

Dunn announced a four part test to use in determining whether an area is protected "curtilage". The Court emphasized, however, that the "centrally relevant consideration is whether the area in question is so intimately tied to the home itself that it should be placed under the home's 'umbrella' of Fourth Amendment protection."

The Wilson court held that the "inescapable conclusion" was that Wilson's greenhouse, like the barn in Dunn, did not lie within the curtilage of his residence.

The Wilson court also noted that even if the greenhouse

was constitutionally protected area, the agents would then be required to secure a search warrant for the greenhouse. This was not done since Wilson consented to the search and said search was deemed lawful.

VEHICLE STOP AND FURTHER QUESTIONING

Coral Springs Police Officer Prosper was working the evening shift at 11:30 pm when he saw a white van with the taillight out. Olave was driving the vehicle.

Prosper asked for Olave's driver's license and Olave provided it. A check came back that the license was authorized for "business purposes only". Prosper asked Olave if he was on his way to work and Olave said no. Officer Brilakis pulled up as a back up. Prosper asked Olave to exit the vehicle and stand along side of the road for safety purposes. Officer Brilakis asked Olave if he had any drugs or weapons on his person and Olave said that he had some pills in his pocket. Brilakis asked for consent to search and Olave consented. Xanax was found on Olave. Olave was not Mirandized prior to this questioning.

Olave was cited for the traffic violation and charged by information with Possession of Alprazolam.

Olave filed a motion to suppress the statements and evidence obtained arguing that it was unreasonable for Officer Prosper to ask Olave to exit the vehicle and that the failure to give Miranda warnings resulted in an illegal custodial interrogation. The trial court agreed and suppressed the evidence.

The Fourth DCA in St v Olave reversed the trial court, holding that the officer did not violate the Fourth Amendment by asking Olave to exit his vehicle, citing the United Supreme Court case of Pennsylvania v Mimms, that police may ask drivers to exit their vehicles as a matter of routine procedure for police safety during traffic stops. The court also found that the encounter turned into an investigatory stop when the officer discovered that the defendant's driver's license was restricted to "business" only. However, this did not prevent the officer from asking the defendant questions without giving Miranda warnings. The defendant was not in custody when the officer asked if he had any drugs or weapons in his pocket and the officer asked for and received consent to search Olave's person.

"We conclude that Olave was not subjected to custodial interrogation and his

admission that he possessed Xanax provided probable cause to search him."

PRIVATE PARTY ACTING AS STATE AGENT

When a private person acts as an agent for the police in performing a search, evidence found by the person is subject to suppression when the private search could not have been performed by a police officer, the Second DCA ruled in *State v Moninger*.

The police were called to Moninger's home by his teenaged daughter to investigate a sex abuse claim. The child was taken outside, and told the police that the defendant had used condoms during the assault and that the condoms were inside in his bedroom. The police gave her a bag and told her to go inside and retrieve the condoms if she wanted to. The court granted a motion to suppress and the DCA upheld the suppression.

"In this appeal, the State argues that the daughter did not act as a government agent but acted out of her own free will. The State suggests that she gave the condoms to the officers to further her own purpose, that is, to substantiate her claim of illegal sexual contact with Moninger. The stipulated facts do not support the State's argument that the

daughter was not an instrument or agent of the State or that she retrieved the condoms for her own purpose. In *Treadway v State*, an opinion from the Fourth DCA in 1988, the court recognized that 'while a wrongful search and seizure by a private party does not violate the Fourth Amendment, when a private party acts as an 'instrument or agent' of the state in effecting a search and seizure, Fourth Amendment interests are implicated.' The court explained that 'the government must be involved either directly as a participant or indirectly as an encourager of the private citizen's actions before we deem the citizen to be an instrument of the state.'"

"Here, the facts of record establish that the daughter's action in retrieving the condoms was precipitated by Detective Ewald's suggestions and encouragement and that the interest being fulfilled was the law enforcement interest in obtaining evidence to support a criminal prosecution. The daughter was being removed from the home based on what the officers already knew, and nothing suggests that the daughter, of her own motivation, considered taking the condoms to substantiate that she had been molested or for any private purpose. As recognized in *Treadway*, the Fourth Amendment is

implicated if the sole purpose of a private search is to further a government interest. Because the record supports the trial court's conclusion that the daughter was acting as an instrument or agent of the State, we conclude that the trial court properly granted Moninger's motion to suppress the condoms."

IN MEMORIAM

MICK PRICE, a former SAO Investigator and retired GPD detective, died in April.

GPD's Lt. COREY DAHLEM was killed in a traffic accident in April, while on duty.

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.

REMINDER: LEGAL BULLETIN NOW ON-LINE

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 www.sao8.org and click on the "legal bulletin" box.