

# LAW ENFORCEMENT NEWSLETTER

MAY 2017

## A MESSAGE FROM BILL CERVONE STATE ATTORNEY

Have I said this before? It's a good reminder regardless. No one is safe while the legislature is in session.

At this writing that's exactly where they are, although things are theoretically winding down towards a scheduled May 5th adjournment date. That may or may not happen as the Senate and House appear to be far apart on many issues, including the budget, which is the one thing they must do each year and the one thing that they seem least in

agreement on.

Little has fully passed so far. Of note, however, is the latest amendment to Florida's death penalty process, all necessitated by court rulings. Last year, you'll recall, the legislature changed the required vote for a recommendation of death from a simple majority to 10-2. Now that has become a unanimous 12-0 vote that is in essence determinative. Once upon a time, back in the early 1970s, the courts ruled that judges must make the final decision because juries

were too likely to be swayed by impermissible passions or prejudices. Now the courts have decided that juries must make the final decision, never mind those concerns. The net result? Who knows for sure other than to say that an assessment of the likelihood of a unanimous vote for death puts a far different perspective on when such a potential case should actually be pursued.

Otherwise, it is apparent that some change to Stand Your Ground procedures will eventually be passed. The impact of the proposed changes, regardless of what the final language is, will be to increase the difficulty of prosecuting any case in which self-defense is claimed. The impact on law enforcement will be more hearings and courtroom testimony before trial, with the attendant impact on time and expense.

Juvenile legislation that might have severely curtailed the ability of the State Attorney to direct file adult charges on serious juvenile offenders in appropriate circumstances ap-



### INSIDE THIS ISSUE

MESSAGE FROM BILL CERVONE	1-2
STAFF CHANGES	2
SAO TWITTER	2
IN MEMORIUM	2
CONGRATULATIONS	3
BLOOD DRIVES	3
SFPD AWARDS	4-5
FDLE	6
FRES PURSUIT - HOME ENTRY	7-10
LE MEMORIALS	11



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[www.sao8.org](http://www.sao8.org)

**REMINDER:  
 LAW ENFORCEMENT  
 NEWSLETTER NOW ON-LINE**

The Law Enforcement Newsletter is now available on-line, including old issues beginning with calendar year 2000. To access the Law Enforcement Newsletter go to the SAO website at <[www.sao8.org](http://www.sao8.org)> and click on the "Law Enforcement Newsletter" box.

**CONTINUED: MESSAGE FROM  
 STATE ATTORNEY  
 BILL CERVONE**

pears to be stalled and perhaps dead for this session. Other juvenile legislation that would require the detention of some serious juvenile offenders so that the constant cycle of arrest, release, new offense, and re-arrest is put to an end appears headed to passage.

Other than the death penalty changes which are already in effect anything new will not generally be effective until July 1 or October 1. Anything of major significance will be circulate immediately; otherwise, and as usual, the October 1st issue of the Legal Bulletin will provide a full recap of what was actually put into law.

**SAO STAFF CHANGES**

**SAO Director of Victim Services Gretchen Casey** retired on April 30th after service in that position as well as many other advocacy groups for many, many years. While Gretchen will continue working as Director of Training and Outreach with the River Phoenix Center For Peacebuilding, no doubt with the same energy and passion she has given to the SAO and victim advocacy in our community since the mid-1980s, she also plans to give more time to herself, her family, and her other interests. Gretchen's position has been filled by Debbie Snyder, who returns to the SAO after an absence of several years.

**In Memorium**

**Retired Assistant State Attorney Margaret Stack** died on January 23, 2017, after battling cancer for several years. During her long tenure with the office Margaret handled many serious cases in both Alachua and Bradford Counties. She will be remembered for her sense of humor as well as her sensitivity to the problems and troubles so many witnesses to and survivors of violent crimes suffer from.

**Retired ASO Deputies Keith Faulk** (January 23rd) and **John Nobles** (February 14th) have also passed away. Both had long careers with the agency and were known to many in our local law enforcement community.



**The SAO Is Now On Twitter**

The SAO has established a Twitter feed to better disseminate information to the media and others such as law enforcement agencies. Like us at #8THCIRCUITSAO. For more information contact Deputy Chief Investigator Darry Lloyd at 352-374-3670.

# Congratulations To...

...ASA John Nilon, who welcomed his first child, Amelia Faye, on January 12th.



...ASAs Brian and Angela Rodgers, who also welcomed their first child, Bellamy Hope, on February 14th.

...ASA Ryan Nagel, who also welcomed his first baby, son Gabriel Manuel, on March 28th.

...ASA Carla Newman, who was selected for the Florida Bar's Wm. Reece Smith Jr. Leadership Academy as a Fellow for 2017-18.

...Baker County Sheriff Scotty Rhoden, who took office on January 3rd after winning election last November.

...The Gainesville Police Department Criminal Investigations Bureau held its awards banquet on February 25th, during which multiple awards were handed out. Recognized as CID's Detective of the Year with the R.T. Angel Award was Jon Rappa. The Steven Kramig Case of the Year awards went to Tom Mullins (persons) and Warren Brown (property). The Gladys Lucas Victim Compassion Award was presented to Summer Kerkau. The Civilian of the Year was Rich Hibner. The SOU (burglary) Detective of the Year award went to Derek Tirado. For SID, the Detective of the Year was Jeff Guyan, the Commander's Choice Award went to Adam Delker, the Case of the Year award was presented to Brett Smith and Barette Boyette, and the Supervisor of the Year was Sgt. Brian Jones.



Any changes in agency email addresses should be reported to our office at [clendenin@sao8.org](mailto:clendenin@sao8.org).

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 Chief Investigator Paul Clendenin at the SAO at 352-374-3670.



Recently retired Victim Services Director Gretchen Casey acknowledges LifeSouth's recognition of the SAO as the leading local government office in blood drive contributions.

## SFPD Awards Ceremony Recap Published on Monday, Jan. 23, 2017



President Dr. Jackson Sasser, Vice President Chuck Clemons Sr. and Chief Ed Book, right, award the International Association of Chiefs of Police Award Community Policing Award 2016 during the Santa Fe College Police Department Awards and Promotional Ceremony on Thursday, Jan. 19, 2017 in Gainesville, Fla.

(Photo by Matt Stamey/Santa Fe College)

In a ceremony held Thursday, Jan. 19, 2017, 9 a.m. Santa Fe College President, Jackson N. Sasser, Ph.D., VP Office of Advancement and State Representative, Chuck Clemons, along with College officials and area law enforcement honored the Santa Fe College Police Department (SFPD).

### **Awards:**

Police Department International Association of Chiefs of Police Special Recognition in Higher Education to the entire SFPD agency, the first time this has been awarded to a higher education law enforcement agency.

Lifesaving Award to: Capt. Ryan Woods, Sgt. Mark Barley, Officers Dawn Beattie, Joe Buckland, Renee Lee, Sarah Smith, Dispatchers Ben Fox, Kate Flippen, Betty Weir, & Office Supervisor Helen Legall

WSKY 97.3 VALOR Award to: 2016 – Officer Renee Lee, 2015 – Sergeant Precious Ford, 2014 – Officer Fred Long

Rotary Club of Downtown Gainesville Department Members of the Quarter. September-December 2016. Officer Dawn Beattie & Dispatcher Kate Flippen

## Continued: SFPD Awards Ceremony Jan. 23, 2017

### Tenured members of the agency serving for five years or more:

Office Supervisor Helen Legall, five years

Chief Ed Book, five years

Sergeants Mark Barley & Larry Cauthen & Officer Tony Manibusan, 10 years

Officer Brad McKenna, 11 years

Officer Guillermo "Gizmo" Cifuentes, 14 years

Officer Joel Pearson, 15 years

Captain Ryan Woods, 18 years

Officer Fred Long, 21 years

Provided recognition to those who have earned higher education degrees, & delivered a Code of Ethics to our professional dispatchers.

Lastly, promoted Officer Precious Ford to Sergeant & Lt Ryan Wood to Captain.



Blanche Woods pins the captain badge onto her husband Capt. Ryan Woods during the Santa Fe College Police Department Awards and Promotional Ceremony on Thursday, Jan. 19, 2017 in Gainesville, Fla.

(Photo by Matt Stamey/Santa Fe College)



**FDLE**

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Congratulations to Special Agent Jeff Vash, who was awarded Law Enforcement Officer of the Year today at the meeting of the Florida Cabinet. The award recognizes Vash's significant impact on the issues of human trafficking through a criminal investigation, his contribution to the quality of investigations through development of best practices related to policies, training, multi-disciplinary involvement or case work, and his work with the public to raise awareness regarding human trafficking.



## FRESH PURSUIT - HOME ENTRY

Officers responded to a noise complaint that had dissipated by the time of their arrival. However, the officers observed Christopher Markus standing with two friends by a pickup truck drinking beer. The officers approached with the intent to advise the men to pour out the beer. An officer smelled the odor of marijuana as he got closer, saw Markus exhale smoke and flick the cigarette into the street outside the home.

An Officer approached Markus, identified himself as law enforcement and asked Markus to stop in order to detain him and confiscate the marijuana. At this point, the Officer was ten feet away from Markus. In response, Markus raised both hands and began to walk backward. The Officer repeatedly instructed Markus to stop, but Markus turned around and ran into the opening to the garage/recreation room of the house. Rather than stopping to collect the marijuana cigarette, officers followed Markus into the home. Markus stands six feet five inches and weighs almost 300 pounds. The officers then used overwhelming force to subdue Markus and handcuff him. During that process the Officers recovered a black semi-automatic pistol from Markus' waistband.

It was not until after the officers entered the home without a warrant, physically subdued Markus, and arrested him, that they returned to the area of the street to recover the marijuana cigarette.

Markus was subsequently charged with possession of a firearm by a convicted felony, possession of less than twenty grams of cannabis, and resisting an officer without violence. Markus filed a motion to suppress

the evidence seized inside of the recreation room. Specifically, Markus argued that the firearm should not be admitted into evidence because it was obtained by the officers in violation of the United States Constitution and Florida Constitution.

The trial court determined that the officers were justified in pursuing Markus once he turned and ran. Further, the court found that the pursuit qualified as a valid exception, or exigent circumstance, to the Fourth Amendment's prohibition of unreasonable warrantless searches and seizures because it was a "hot" pursuit (i.e. the pursuit was continuous and immediate). After trial Markus was found guilty.

On appeal to the 1st D.C.A. the ruling on the motion to suppress was reversed. Relying on the United States Supreme Court decision in *Welsh v. Wisconsin*, (S.Ct.1984), the district court recognized that the gravity of the offense which has generated police action is an important factor in determining whether hot pursuit applies. Specifically, the D.C.A. noted that the Supreme Court stated in *Welsh* that there is a presumption of unreasonableness that the State must rebut when a search is conducted in a home without a warrant, and that presumption is difficult to rebut when the offense is minor. An appeal to the Florida Supreme Court followed.

### Issue:

Does the exigent circumstance exception of hot pursuit justify a warrantless home entry, search and arrest when the underlying conduct for which there is probable cause is only

## Continued: FRESH PURSUIT - HOME ENTRY

a non-violent misdemeanor and the evidence of the alleged misdemeanor is outside the home? **No.**

### **Constitutional Protection of the Home:**

The Fourth Amendment makes any search without a warrant per se unreasonable, unless the search meets one of very few criteria. A person has standing to claim Fourth Amendment protection if that person has a reasonable expectation of privacy in the invaded place. Further, the reasonable expectation of privacy not only applies to the inside of a person's home, but to the curtilage of the home as well. Thus, there was no dispute that Markus had a reasonable expectation of privacy in the area searched—the attached garage utilized as a recreation room.

The State argued that the Court need not look to anything other than the laws to perfect arrest, without regard to how minor the violation may be. The Fourth Amendment has never been interpreted that broadly and the Florida Supreme Court refused to accept the State's interpretation. The United States Supreme Court has regularly ruled that the sanctity of the home shaped the Fourth Amendment that we know today. In *Florida v. Jardines*, (S.Ct.2013), the Court explained, "At the Amendment's 'very core' stands 'the right of a man to retreat into his own home and there be free from unreasonable governmental intrusion.'" See, *Payton v. New York*, (s.Ct.1980), "As

the Court reiterated just a few years ago, the 'physical entry of the home is the chief evil against which the wording of the Fourth Amendment is directed.' And we have long adhered to the view that the warrant procedure minimizes the danger of needless intrusions of that sort."

An exigent circumstance constitutes a warrant exception. The burden is on the State to demonstrate that an exigent circumstance existed to justify the warrantless search. Exigent circumstances require that there be a "grave emergency" that "makes a warrantless search imperative to the safety of the police and of the community." *Illinois v. Rodriguez*, (s.Ct.1990) Moreover, the Court has described the lack of time to secure a warrant as a "key ingredient" of exigency, and further noted that an officer must cease the search once he or she realizes that the exigency no longer exists.

The United States Supreme Court has consistently recognized three major categories of exigent circumstances: (1) the emergency aid exception, whereby an officer enters a home to render emergency assistance to an occupant who is seriously injured or for whom serious injury is imminent; (2) "to prevent the imminent destruction of evidence"; and (3) the hot pursuit exception, which allows officers to proceed into a residence without a warrant if they are in the process of the continuous hot pursuit of a fleeing suspect. The rationale supporting the exception for hot pursuit was summarized by the Supreme Court in *United States v. Santan*, (S.Ct.1976): "A suspect may not defeat an arrest which had been set in motion in a public place...by the expedient of escaping to a private place."



## Continued: FRESH PURSUIT - HOME ENTRY

Specifically, a key ingredient of hot pursuit is an element of danger or grave emergency.

In *Welsh v Wisconsin*, (S.Ct.1984), the Court noted that the gravity of the circumstances must be considered in cases of hot pursuit. Specifically, the Court expressed its hesitation to find that exigency existed when the underlying offense for which there is probable cause is a minor one. Further, the *Welsh* court observed that most lower courts have refused to permit warrantless home arrests for non-felonious crimes. The Court thus concluded that when the offense is minor, a home arrest should usually be accompanied by a warrant.

“We therefore conclude that the common-sense approach utilized by most lower courts is required by the Fourth Amendment prohibition on ‘unreasonable searches and seizures,’ and hold that an important factor to be considered when determining whether any exigency exists is the gravity of the underlying offense for which the arrest is being made. Moreover, although no exigency is created simply because there is probable cause to believe that a serious crime has been committed, application of the exigent-circumstances exception in the context of a home entry should rarely be sanctioned when there is probable cause to believe that only a minor offense ... has been committed.” See, *Welsh*.

### **Court’s Ruling:**

“in the instant case, the State has failed to demonstrate that the totality of the circumstances justified application of the hot pursuit exception to the Fourth Amendment’s warrant

requirement. Markus did not pose a danger to the public, to the police, or to anyone. Specifically, Markus was observed by the officer to be smoking what was alleged to be a marijuana cigarette and threw the cigarette onto the ground. The officers could have simply secured the evidence without any problem. When he was approached, Markus did not jump over a fence or cross into a neighboring yard; rather, the evidence shows that Markus walked backwards with his hands up, and moved a few feet into his open garage/recreation room. This was not hot pursuit – this was slow pursuit at best. Markus could not escape because he was in actually view of the officers the entire time. There were no hostages, no threat of weapons, and no danger. The State merely uses a broad brush to paint hot pursuit in total isolation from the totality of the circumstances. However, as we have observed in multiple United State Supreme Court opinions, it is inescapable to look to the gravity of the circumstances; this is critical to promote homeowners and public safety, as well as officer safety. The potential danger that accompanies an officer’s entry into the private dwelling of an individual is not to be taken lightly. We cannot endorse a standard that would encourage such needless entries, and thus increase the potential for officer injuries or fatalities.”

“In this particular case, the officer had no need to enter the home, not only because the suspected offense was minor, but also because the evidence was at hand with no risk of imminent destruction. The officer was free to retrieve the cigarette from the public street as evidence without entering the residence; in fact, the officer later returned to the driveway area after the consti-

## Continued: FRESH PURSUIT - HOME ENTRY

tutional violation and scuffle to recover the alleged cigarette. Thus, it is clear that the officer here avoided the evidence.’

“Furthermore, the outcome petitioned for by the State—that any jailable offenses be subject to hot pursuit, regardless of how minor—would unleash irrational and invasive results on the public. For example, there are a number of potentially jailable Jacksonville Beach Code violations that would render the enforcement of such a holding absurd. Specifically, jaywalking and littering are among the potentially jailable offenses outlined in the Jacksonville Beach Code. Under the State’s logic, police suspicion of such minor code violations would allow an officer to invade a citizen’s home without a warrant.”

“The State asks us to plow open the homes of American citizens and permit this kind of police behavior, even though doing so would overstep hundreds of years of legal history. The sanctity of the home is paramount and we cannot do so. Accordingly, we hold that the exigent circumstance of hot pursuit here on these facts does not justify a warrantless home search and arrest when the underlying conduct for which there is probable cause is the alleged violation here — a non-violent misdemeanor. We thus approve the First District’s decision to reverse the denial of Markus’ motion to suppress and to reverse Markus’ conviction.”

### Lessons Learned:

Once again this is a life lesson that “bad facts make bad law.” At a time when multiple jurisdictions have decriminalized simply

possession of marijuana, chasing a man into his home to make that arrest was doomed from the outset. As the Florida Supreme Court observed here;

“The point of the Fourth Amendment, which often is not grasped by zealous officers, is not that it denies law enforcement the support of the usual inferences which reasonable men draw from evidence. Its protection consists in requiring that those inferences be drawn by a neutral and detached magistrate instead of being judged by the officer engaged in the often competitive enterprise of ferreting out crime. Any assumption that evidence sufficient to support a magistrate’s disinterested determination to issue a search warrant will justify the officers in making a search without a warrant would reduce the Amendment to a nullity and leave the people’s homes secure only in the discretion of police officers. Crime, even in the privacy of one’s own quarters, is, of course, of grave concern to society, and the law allows such crime to be reached on proper showing. When the right of privacy must reasonably yield to the right of search is, as a rule, to be decided by a judicial officer, not by a policeman or Government enforcement agent.”

**State v. Markus**  
**Florida Supreme Court**  
**(Jan 31, 2017)**



**Law Enforcement Memorials:**

Law enforcement memorial ceremonies have been scheduled in our area as follows during May. Please attend if possible to honor both our fallen heroes and our active members.

**Alachua County:** Thursday, May 4, 2017, at 7pm at the Veterans Memorial Park on Tower Road in Gainesville. A reception will begin at 6pm prior to the actual memorial and everyone is invited.

**Baker County:** Thursday, May 11, 2017, at 6:30pm at the Christian Fellowship Temple, 251 W. Ohio Avenue, Macclenny.

**Bradford/Union Counties:** The joint memorial will be on May 11, 2017, at 6:30pm at the 1<sup>st</sup> Christian Church of Lake Butler, 155 N.W. 1<sup>st</sup> Street, Lake Butler.





















