

# Looking for trouble



## Know Your Rights

by Atty. Jay C. Howell

As our citizens see newspaper articles and television accounts concerning the workings of the criminal justice system, they often wonder why certain seemingly important evidence, often about the bad character or prior criminal acts of the accused, are never heard by the jury deciding the case. The law does have a fundamental principle that the bad reputation and previous unlawful acts of the accused are not normally relevant to the issue of whether the defendant committed the crime for which he is being tried. Recently, a Florida appellate court explained this principle.

The defendant was found guilty in a Miami courtroom of attempted second-degree murder with a firearm. The victim of the crime testified in court that he had an altercation with the defendant in the bathroom at a bar. The defendant pointed a gun at him, and during the struggle which ensued, the gun went off, striking the defendant in the leg. The victim was eventually able to place the defendant in a choke hold and drag him out into the parking lot, where he was disarmed by the owner of the bar who sprayed the defendant with pepper spray. When the police arrived to investigate, the victim told them what had occurred.

On the other hand, the defendant gave several different and inconsistent statements to the police. First, he told the original officer that he had been robbed by three men outside the bar. When he got to the hospital, he told a second detective that after

leaving the bar, he was followed to a gas station, where he was robbed by two men, one of whom shot him. While being transported from the hospital to the jail, he told a third detective another story. He said he went into the bathroom at the bar to sell the victim a gun, but the victim took the gun from him, punched him in the head, and shot him. The defendant appealed his conviction and the appellate court officially labeled the defendant's statement as a "work in progress."

In court, the victim described how he told the perpetrator in the bathroom, "If you pull the trigger, make sure you kill me. If you leave me alive, I'm going to do something to you." When asked by the prosecutor why he walked toward the defendant, the victim stated, "Because he - I've heard of him, he likes to scare people with his gun." The defense attorney objected to these comments, and based upon the legal principle that the state cannot introduce evidence attacking the character of the accused, asked the judge for a new trial. The trial judge denied the request for a new trial, but did instruct the jury to disregard the comment that the defendant likes to scare people with his gun.

When the owner of the bar

testified, he related that he told the defendant to leave, "Because he will always come here. He would come look for trouble." Again the defense objected and asked for a new trial. The judge denied the motion for a new trial, but again instructed the jury to disregard the comments about the bad character of the accused.

The appellate court agreed with the defendant that both of these statements constituted an attack on the defendant's character and were basically improper at that stage of the trial. However, the appeals court concluded that these statements had little impact, if any, upon the defendant's credibility and, since the trial judge told the jury to disregard the statements, the trial judge had not erred. Accordingly, the appeals court affirmed the defendant's conviction for attempted second degree murder with a firearm.

This appellate court decision is *Villanueva v. State*, decided by our Third District Court of Appeal on December 28, 2005.

*Jay Howell, a Jacksonville attorney, has been a State Prosecutor, a US Senate Investigator, and the founder of the National Center for Missing and Exploited Children. He represents crime victims in civil claims for damages and advocates for the legal rights of all victims.*

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## WE NEED YOUR HELP

### Joshua Kyle Allen, Age 27

It's been more than eight months since our son was murdered, and no arrests have been made. Josh Allen was found murdered July 29, 2005, in his condo at Grand Reserve Condo off Hodges Blvd. We know there is someone with information about this crime. Please help us let Josh rest in peace.

Contact JSO at 630-2172 or Crimestoppers if you can help solve this murder.

This ad paid for by Josh Allen's family

# HATS OFF!

Good for you...



...to Ellen Coggin, a long-time resident of the Sans Souci neighborhood who is determined to keep her community safe and crime-free.

Ellen says that thefts and vandalism by a group of lawless juveniles were increasing in Sans Souci, but what motivated her recent "call to action" was a neighbor's victimization - the family of a quadriplegic child was burglarized. To help make ends meet, the father of this family was repairing something for a friend to make extra money, but the gang of young criminals stole the item from the back yard.

Incensed about these hoodlums running amok in her area, she went to the next neighborhood watch, which was attended by all of ten people. Something HAD to be done, and she was the one to do it. In a period of just two weeks, she and the dedicated members of the Greater Sans Souci Neighborhood Association walked flyers to as many of the 1500 residences as possible. She then immediately began contacting everyone she thought

might have an impact - and a meeting was scheduled at the Elks Lodge on March 16.

Sans Souci responded - a standing-room-only crowd of approximately 200 residents listened to Sgt. Steve Ernest (JSO), Suzanne Jenkins (City Council), Angela Corey (Asst. State Attorney), Joy Birmingham (Justice Coalition), Susan Harrell (Jax Pride) and several others who pledged their support in ridding the area of these lawless hooligans.

Ellen, who has lived in Sans Souci for more than 45 years, cherishes the closeness enjoyed among the neighbors - and she's not going to let it go. She and her husband, Ron, have been active for years in the neighborhood.

Our hats are off to this concerned citizen who is striving to make her city a safer place to live.



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