



THE PROSECUTOR

A NEWSLETTER FROM

MAT HECK, JR.

Dayton-Montgomery County Courts Building, P.O. Box 972, 301 W. Third St., Dayton, OH 45422 (937) 225-5757

Fall, 2003

1800 STUDENTS SPEAK OUT AGAINST VIOLENCE

**DEFENDANT CAN BE
CRIMINALLY LIABLE FOR THE
DEATH OF HIS ACCOMPLICE**
Murder Conviction Affirmed

On May 21, 2003, Prosecutor Mat Heck, Jr. and his staff held the 13th Annual Violence Prevention Contest Awards Ceremony. The event, held at Courthouse Square in Downtown Dayton, showcases winners of the Violence Prevention Poster and Essay Contest. The contest is open to all kindergarten through 12th grade students in Montgomery County. In 2003, the contest drew over 1800 entries. "We believe that by sponsoring programs such as this Violence Prevention Project, we can get young people thinking about alternatives to violence and thereby reduce violence and crime in our community," Heck said.

Prizes are awarded to all entrants, with special prizes being awarded to the top entries in each

age group.

The winning entries are featured in Mr. Heck's Violence Prevention Calendar, which is distributed to over 8,000 students and area residents each year.

Special thanks to our co-sponsors who help make this program possible: Paramount's King's Island, Dayton Dragons, Boonshoft Museum of Discovery, Poelking Lanes, University of Dayton Athletic Department, Domino's Pizza, Ben & Jerry's, Young's Dairy, Cap'N Bogey's, Splash Moraine, Victoria Theater, Moonwalk Kingdom, Mead/Westvaco, Kroger, The Pizza Factory, Dayton Fraternal Order of Police, Huber Heights / Riverside Fraternal Order of Police, and Montgomery County Sheriff Dave Vore.

Recently, the Court of Appeals for Montgomery County affirmed the conviction of Christopher Dixon for murder and aggravated robbery. This appellate decision holds that a defendant can be held criminally liable for the death of his accomplice if the death is a proximate result of the defendant's committing, or attempting to commit, certain felonies. Dixon and his cousin, Sherman Lightfoot, attempted to commit an aggravated robbery at the Jiffy Lube on Salem Avenue in Dayton. Lightfoot pointed the gun at the manager's face and a struggle ensued. Subsequently, the manager gained control of the gun and shot and killed Lightfoot. Dixon was charged with, and convicted of, among other things, the murder of Lightfoot. The Appeals Court affirmed the conviction because Lightfoot's death was within the foreseeable scope of risk created by Dixon when he and Lightfoot attempted to rob the store at gunpoint. This is a most interesting case, argued by Assistant Prosecutor Lynn Nothstine.



Mat Heck, Jr. poses with the winners of the Violence Prevention Poster Contest.

“Deadbeat Dad” forfeits TV Game Show Winnings

\$5,000 Donation to Support Victim Services

The Support Enforcement / Paternity Division of the Montgomery County Prosecutor’s Office recently recovered \$10,000 won by Vincent Ward on the game show “The Price is Right.” Mr. Ward has an outstanding child support arrearage of over \$24,000 here in Montgomery County, and has another child support case pending in Miami County.

Upon learning of the winnings, Assistant Prosecutor Mary James-Cox filed documents in the Montgomery County Juvenile Court to re-

strain CBS Television and “The Price is Right” from turning over the prize money to Mr. Ward. CBS cooperated, and the \$10,000 was placed in the hands of the Montgomery County Support Enforcement Agency, to await disposition by the court. On July 29, 2003, it was decided by the court to apply \$8,000 of the winnings towards his Montgomery County support order, and the other \$2,000 towards his arrearage in Miami County.

BWXT of Ohio, Inc., located in Miamisburg, recently made a \$5,000 donation to the Montgomery County Prosecutor’s Office for victim services.

These funds will be used to support the prosecutor’s office victim crisis response center, which is manned 24 hours a day, 7 days a week. This center functions as the rape crisis center for Montgomery County. When a call is received, a victim advocate from our staff, or a trained volunteer, responds to the rape victim at the hospital or police station to offer immediate and crucial support.

The donated funds will also support other programs offered to crime victims in Montgomery County, including the Homicide Victim Memorial Service, held every December.

“We certainly appreciate the valuable financial assistance provided by BWXT and others in our community. Those funds help us to continue to provide vital services to victims of crime in Montgomery County,” Rhonda Barner, Director of the Victim-Witness Division said.

Identity Theft—What is it?

Identity theft involves acquiring pieces of someone’s identifying information, such as name, address, date of birth, social security number and mother’s maiden name, in order to impersonate them. This information enables the thief to commit numerous forms of fraud including opening new bank accounts, purchasing automobiles, renting apartments, establishing

phone and utility services, applying for credit cards, loans and social security benefits. Also, an offender might provide the police **your** information when involved in an accident or other incident when they don’t want to be identified.

“Assistant Prosecutor of the Year” Awarded

On May 5th, 2003 Assistant Prosecutor Steve Abshire was recognized as “Outstanding Assistant Prosecuting Attorney of the Year” by CASA (Court Appointed Special Advocates). Mr. Abshire was nominated by CASA volunteers. The award was pre-

sented at the Fifteenth Annual CASA Recognition Ceremony at the Presidential Banquet Center in Kettering. The award recognizes the outstanding work Steve has done for children and families. Congratulations!

Did You Know?

The **Criminal Non-Support Bureau** of the Support Enforcement / Paternity Division has collected over \$1,040,000 in child support payments since its inception in 2000.

Local Case Results in Ohio Supreme Court Ruling

On June 16th, the Ohio Supreme Court in a case prosecuted by the Montgomery County Prosecutor's Office, closed a gap in the law created in a ruling by a lower court, which, if allowed to stand would have prevented the state from prosecuting nurses in nursing homes for falsifying records to hide their theft of drugs prescribed for patients.

The case concerned the definition of 'sale' as used by the legislature, as it pertains to the offense of illegal processing of drug documents in particular and the state's drug laws in general.

In this case, a nurse was charged with five counts of illegal processing of drug documents for falsifying the records used to track the drugs administered to the residents of the nursing home where she worked. She was accused of stealing drugs intended for residents, and then covering her crime by reporting, on daily logs kept by the nursing home, that residents had received the drugs in the proper dosage. The trial court refused to allow the state to use the logs as evidence at the trial, holding that neither the nursing home nor the nurse was required to keep logs of medicine administered to patients because only those who "sell" drugs are required to keep such records, and neither the nursing home nor the nurse "sold" drugs to the residents.

The Montgomery County Prosecutor's Office appealed the court's ruling to the Second District Court of

Appeals, which agreed with the trial court, holding that the law required only those who "sell" drugs to keep such logs, and neither the nursing home nor the nurse sold drugs. According to the appellate court, they simply administered them to the patients.

Because this ruling would undermine our efforts to prosecute nurses or other nursing home employees who falsify documents in order to hide their theft of drugs intended for patients, the Prosecutor's Office appealed this ruling to the Ohio Supreme Court. The Supreme Court agreed with us, and held that the lower courts were mistaken in defining a "sale" so narrowly. In fact, the Court said, the law very specifically defines "sale" as "delivery, barter, exchange, transfer or gift...and each transaction of those natures made by any person." Because the administration of drugs is encompassed in a "delivery" of the drugs to the patient, the Court determined that the nursing home was required to keep logs of medications dispensed, and that the nurse could be prosecuted for falsifying those documents.

The prosecution of the nurse for illegal processing of drug documents is now proceeding and will go to trial later this fall.

Protect Yourself from Identity Theft

Important ways to protect your information from being stolen by a would-be identity thief include:

- Remove mail from your mailbox as soon as possible. Don't place payment for bills in your home mailbox—take them to the post office or a drop off mailbox.
- Never give personal information, such as social security number, credit card numbers, bank account information or date of birth over the phone, unless you initiated the call.
- Shred pre-approved credit applications, credit card

receipts, bills and other documents with your personal information before discarding.

- Report lost or stolen credit cards immediately.
- Beware of e-mails asking for your passwords, credit card information, or other information of a personal nature.
- Never leave receipts at ATMs or gas pumps.

If you feel you may be the victim of identity theft, here are some steps to take immediately:

- File a report with your local

police department. Obtain a copy of the report for your bank and creditors.

- Contact all creditors and inform them of the problem.
- Close any accounts that may have been compromised.
- Get a copy of your credit report from the credit bureaus, and ask that a "Fraud Alert" be placed on your file.

For more information, contact our Consumer Fraud and Economic Crimes Division at 225-4747.

Prosecutor Briefs

- **Shirley Kinsey** joined the staff as a legal secretary in our Support Enforcement / Paternity Division.
- **Jennifer Jannicelli** is now a legal secretary in our Consumer Fraud and Economic Crimes Division.
- **Lisa Flavin** joined the Victim/Witness Division of the Prosecutor's Office as a victim advocate.
- **Anne Folkerth** joined our clerical staff in our Support Enforcement / Paternity Division.
- **Jim Knight**, after 30 years of service to Montgomery County, retired at the end of April. Jim was a probation officer before joining the Prosecutor's Office as a Diversion Officer. In 1992 he was named as Mat Heck's Administrative Assistant. Best of luck to Jim!
- **Greg Flannagan**, who has been with the office since 1995, was promoted to the position of Administrative Assistant to Mat Heck as of May 1, 2003. Greg joined the office as an MIS Technician, and in 1999 was promoted to Network Administrator.
- Eight new attorneys have recently joined the Prosecutor's Office staff. They are: **Elizabeth Scott**, **Jill Sink** and **Jessica Francis**, all graduates of the University of Dayton School of Law; **Kimberly Whiting**, a graduate of the New England School of Law; **Jennifer Brumby**, a graduate of the University of Toledo School of Law; **Jennifer Heapy**, a graduate of the Moritz College of Law, Ohio State University; **Elizabeth Zachman**, a graduate of Tulane University Law School, and **Elizabeth Tye**, a graduate of the University of Akron School of Law. Congratulations to these new Assistant Prosecutors.
- Our office lost a good friend and colleague in May, when Assistant Prosecutor **Carla Jones** passed away. Carla was a Police Officer with the Ft. Worth, Texas Police Department before attending law school. In 1992, she received her law degree from the University of Dayton School of Law. She joined the Prosecutor's Office in January, 1993 and was assigned to the Criminal Division. We will certainly miss Carla.
- Sadly, Assistant Prosecutor **Robert Swaninger** passed away on August 29th, 2003. A decorated WWII Combat Veteran, Bob worked in the Delinquent Tax Assessment and Collections section of the office for over 12 years. Our office won't be the same without Bob.

The Prosecutor is published as a public service by the Montgomery County Prosecutor's Office. For questions or comments about articles appearing in The Prosecutor, or to recommend topics you'd like to see, contact: Mr. Greg Flannagan at 937-225-5610 or e-mail flannagang@mcoho.org.

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