

# THE PROSECUTOR'S PROGRESS

## AN UPDATE FROM THE VIRGINIA BEACH COMMONWEALTH'S ATTORNEY'S OFFICE



VOLUME 1, ISSUE 2    FALL 2014



### A MESSAGE FROM THE COMMONWEALTH'S ATTORNEY



As law enforcement officers, I know that many of you have seen firsthand the violence that can be inflicted upon a victim by someone they know and love. We all know that one domestic violence fatality is too many, and that is why the Samaritan House and Commonwealth's Attorney's Office have formed a Domestic Violence Fatality Review Team. The team also will include a representative from each of the following agencies: Virginia Beach Police Department, State Medical Examiner's Office, Virginia Beach Department of Social

Services, Virginia Beach Community Corrections and Pretrial, Virginia Beach Magistrate's Office, Virginia Beach Victim-Witness Office, and Fleet and Family Support Services.

The review team will study facts and circumstances of fatal family violence incidents that occurred in Virginia Beach and are no longer pending in the court system. An annual report will then be submitted to Virginia Beach City Council. Recommendations by the review team will benefit the community and further improve public safety in our community.

This is especially timely as October is Domestic Violence Awareness Month. Let's all take a moment to remember those who have lost their lives to acts of domestic violence and do our part to seek justice and protection for future victims.

I am eager to work closely with many of you on this important initiative and again I thank each and every one of you for your dedicated service to the citizens of Virginia Beach.

Sincerely,

Commonwealth's Attorney Colin Stolle

#### SPECIAL POINTS OF INTEREST:

- *A message from Commonwealth's Attorney Colin Stolle*
- *Focus on Firearm by Felon Cases*
- *Meet William "Bill" Heath*
- *Law Enforcement Officer of the Quarter: Deputy Sheriff John Mallory*



## FOCUS ON FIREARM BY FELON CASES

VA Code §18.2-308.2 provides that it shall be unlawful for any person who has been convicted of a felony to knowingly and intentionally possess a firearm. A violation of this section is a Class 6 felony. However, if the prior felony conviction occurred within the prior 10 years, there is a mandatory minimum sentence of 2 years. And, if the prior felony conviction is defined as violent, there is a mandatory minimum sentence of 5 years.

Possession can be either actual or constructive. Actual possession is, of course, much easier to prove than constructive possession. More often than not, however, constructive possession cases are the ones that go to trial. Given the imposition of mandatory sentences involved with findings of guilt, the Commonwealth is most often required to prove the elements of the offense at either a bench trial or a jury trial. To prove constructive possession, we must prove that the defendant was “aware of the presence and character” of the firearm AND “exercised dominion and control” over it. Given the most frequent scenario of a convicted felon in a car with a firearm in proximity, there are many steps we can take to help secure a conviction.

The first and foremost consideration is officer safety. Once you feel that you have secured the situation and that your safety is no longer an issue, the following steps should be taken whenever possible:



- Document any furtive movements and body positions of everyone during the initial stop and approach of the suspect vehicle. Particular attention should be given to those in the vehicle who are convicted felons or otherwise ineligible to possess a firearm.
- A photograph of the firearm should be taken in the location where it was found. If a photograph is not possible, field notes and personal diagrams can also be very helpful. Once the firearm has been made safe, additional photographs to document the specifics of the firearm should be taken. These would include the safety position, and inventory and location of ammunition.
- Wear gloves. The firearm will be sent for various forensic evaluations. The ability to minimize the number of people handling the firearm is greatly effective in obtaining positive results from these tests.
- A diagram of where all subjects of the vehicle are in relation to the firearm should be made. Photographs of the inside of the vehicle can also be very helpful in presenting to a jury. Allowing the jury to see the “close proximity” of the firearm to the suspect is much more effective than having to rely on testimony alone. *(continued on page 3)*

- Biographical data and interviews of each person in the vehicle should be completed. All too often, defendants bring witnesses, who were on scene, to testify on their behalf. Not having the knowledge of who those potential witnesses are and what they stated to officers on the night of the offense, make it almost impossible to discredit or cross-examine their testimony at trial.
- Once the scene investigation has been completed and the firearm and other evidence recovered, the firearm should be sent to VBPD Forensics for both fingerprint recovery and DNA swabs *before* NIBIN and operability testing by the Department of Forensic Science.

While this may tend to turn a routine traffic stop into a full felony investigation, these steps have become crucial in the successful prosecution of constructive possession cases. We will now be able to present to the jury a thorough and fully investigated criminal prosecution complete with forensic evidence. You can get more information on this topic from, VBPD training bulletin, *Firearm Recovery and Evidence Exam Request, Sgt. M. Meister, 3<sup>rd</sup> Precinct*. It is only by working these cases together from the scene to the courtroom that we can produce successful results that benefit our community.



## WELCOME INVESTIGATOR WILLIAM HEATH



**Legal Investigator**  
**William Heath**

William “Bill” Heath began working at the Commonwealth’s Attorney’s Office as a Legal Investigator effective September 8, 2014. Many of you may recognize Bill as he came to us from the Virginia Beach Police Department’s Cold Case Unit. Prior to his work there, Bill served 24 years with the Naval Criminal Investigative Service as a Special Agent and then as the Quality Assurance Officer to NCIS Executive Assistant Director for the Atlantic Region. He also served as a police officer for Greenville, North Carolina for 4 years. Bill will be assisting prosecutors prepare their cases by conducting follow-up interviews with witnesses, locating and serving subpoenas, ensuring victims and witnesses appear in court, and other investigations as cases develop. We are eager to have Bill bring his knowledge and experience to our office and hope you will join us in welcoming him.



VIRGINIA BEACH  
COMMONWEALTH'S ATTORNEY'S  
OFFICE

2425 Nimmo Pkwy,  
Building 10 B, 2nd Floor  
Virginia Beach, VA 23456

Phone: 757-385-4401  
E-mail: [OCAAdmin@vb.gov](mailto:OCAAdmin@vb.gov)



TOGETHER, WE CAN  
KEEP VIRGINIA BEACH  
SAFE!



Deputy Mallory started at the VBSO in September of 2010, and within almost 2 years, was transferred over to the Courts and Transportation Division. In a very short time, he worked his way to the position of Bailiff for Judge Teresa Hammons. His unflappable demeanor and demonstrated professionalism toward all in his courtroom are what make Deputy John Mallory the quintessential courtroom bailiff. But the demonstrations of those values attributable to the Sheriff's Office don't stop with the General District Court. During his time off, Deputy Mallory continues to support his community by teaching with the Awana program at his church and coaching the youth basketball teams. Outside and inside the courtroom, Deputy Mallory serves not only the law enforcement and legal community of Virginia Beach, but the citizens as well. The Commonwealth's Attorney's Office recognizes the commitment, compassion, and determination it takes to be successful at a position filled with such responsibility and unexpected possibilities. Thank you, Deputy Mallory, for your service.

## LAW ENFORCEMENT OFFICER OF THE QUARTER

Integrity. Compassion. Professionalism. These are the values that drive the deputies of the Virginia Beach Sheriff's Office (VBSO), and none more so than Deputy John Mallory. If you walk through the hallways of Virginia Beach General District Court, especially on a Thursday or Friday, you can sometimes feel the brimming tensions that accompany the felony preliminary hearing dockets. That particular docket brings with it the potential of heightened emotions on both sides of the case. General

District Court hearings are often heard in short order from tragedy and situations that carry with it scars that have not healed. It takes a conscientious and patient deputy to provide security and control for a



courtroom simmering with such potential. Deputy John Mallory exemplifies the integrity, compassion, and professionalism that the Virginia Beach Sheriff's Office strives for. He is a kind and patient presence that monitors with a watchful eye all four corners of the courtroom. He also aids in the timely administration of justice by being proactive and quick with assistance.