

Video Lies

As told to Edmund Newton

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The Truth Can Set You Free

On dark nights, when your own mortality seems to feed on you like the rust on Tailpipe's flank, think of **Donald Baker** and know that things could be worse. The 'Pipe has never met Baker, but sometimes he thinks about him, sitting for the past four years in the Hendry Correctional Institute in Immokalee on what certainly looks like a bum charge.

Baker's current problem stems from an incident in Hollywood on April 18, 2003. He was on a street corner talking to two acquaintances who happened to be carrying open containers of beer. The 55-year-old Baker, who seems to be pursued by trouble, got pulled in too because there was an outstanding warrant for his arrest for failure to pay a \$25 fine on an open-container violation.

Cut to the Hollywood Detention Center, where the arrestees were being processed by the cops. An argument broke out between Baker's two associates, both homeless men known to the Hollywood P.D. because of prior arrests. When the cops stepped in to break it up, Baker allegedly interceded, yelling "Fuck off, asshole!" at Officer **Francis Hoeflinger** and punching him in the back. Hoeflinger and Officer **John Graham** then "subdued" Baker, a fragile-looking man who, when he's flush enough to afford cigarettes, chain-smokes Marlboros. Then the officers dragged Baker to a holding cell and filed a charge of battery on a police officer.

What makes a fairly routine Hollywood arrest interesting is the surveillance video that purportedly recorded the incident in the detention center. The grainy, soundless, black-and-white tape shows Graham throwing a punch at one of the homeless men. After Baker appears to say something, Hoeflinger punches him twice, and Baker hits the ground. Hoeflinger puts his finger in Baker's face, and Baker grabs it, then pushes Hoeflinger to the ground. Then comes Graham, fists clenched, at Baker. That's when the tape seems to jump. Suddenly Graham is five steps away.

Baker, who has appealed his April 2004 conviction, said the tape was crudely edited to implicate him, and a videotape expert hired by a court-appointed defense attorney agreed. But that didn't stop Judge **Michael Gates** from sentencing Baker to five years in prison in December 2004.

Baker knows the drill. He's had drug and alcohol problems and a long history of breaking the law. In 1974, he was convicted of assault and robbery and spent five years in state prison.

The 'Pipe wondered why Baker should sit in jail while his appeal, which appeared to have substance, wended its way back to court. But the criminal justice system absorbs people like Baker — sucks them in, processes them, and files them away until it's time to spit them out again.

Baker may finally get his chance, though. The Court of Appeals recently sent his case back to the Circuit Court. Prosecutor **Scott Raft** has agreed to have the surveillance video examined by an independent expert, **Marla Carroll** — a former employee of the Broward Sheriff's Office and the FBI. For Baker's new attorney, **Melissa Donoho**, Carroll's appointment raises questions of impartiality.

"I am concerned," she said. "I might try to get the court to appoint me somebody else."

If the expert finds the tape was tampered with, Raft says, Baker walks.

"Everybody wants to make sure there is no impropriety here," Raft told *New Times*.

Baker's original attorney, **Madeline Torres**, never called a videotape expert to the witness stand. The prosecution, however, called Hollywood Police Detective **Robert Knapp**, who claimed that a "video duplex" — two surveillance cameras recording a single video — caused the tape to appear edited.

Tailpipe still thinks about the circumstances that got Baker trapped in prison: What kind of reckless impulse would make him grab an arresting officer's hand and yell obscenities at him? Did he do it at all? Do his four years in prison rest on a clumsy video trick?

The expert's findings will be presented October 19. Film at 11.

Singapore, U.S.A.

Michael Gurney works hard. The 25-year-old Oakland Park cabinetmaker has been doing tough physical labor for ten years. Clearing restaurant tables, moving furniture, refurbishing homes — you name it, he's done it, his wife, **Kim**, says.

All that heavy lifting has taken a toll on his body. Michael has chronic, intense, lower back pain. He also has a toddler, **Ava**, and Kim is pregnant again. Money is tight; so is time. Michael works seven days a week to pay the bills so Kim can stay home with Ava, who was born prematurely. Kim is trying to take it easy with her second pregnancy, especially since she expects complications again.

Michael, who usually works 12-hour days, can't afford to go to the doctor, Kim says. So what does he do? He borrows some painkillers from a buddy. Then he gets pulled over by a cop. Michael's tag and insurance have expired because he can't afford to pay the fees. He tells the officer about the pills — and he's arrested.

Yeah, it sounds crazy. When Michael got pulled over in May, he was carrying nine little white pills of hydrocodone (the active ingredient in Vicodin). In Florida, carrying 4 to 14 grams of narcotics like hydrocodone is a first-degree felony — it's considered drug trafficking. The charge carries a mandatory sentence of three years in jail.

Kim Gurney is freaking out. Michael has never been in trouble with the law; he's a great father and husband, she says. Now she's afraid she won't be able to pay the bills on her own. "I feel like I'm just waiting for my life to be over," she says. "This is *not* somebody who needs to be kept off the streets. If I go into labor early again, who is going to take care of my daughter? I was in the hospital for 11 days when she was born."

The State Attorney's Office has offered Michael 90 days in a prison drug treatment program in lieu of the three-year sentence. But even three months without pay could push the Gurneys into financial ruin.

Michael Gurney's attorney, **Roy Prize**, hopes the prosecutor will put together an offer that doesn't involve jail time. "This is a guy with back problems who messed up by getting painkillers from a friend instead of going to a doctor for a prescription," Prize says.

"He belongs at home with his child and pregnant wife."

If Florida law didn't call for a mandatory sentence, the judge in the case would have more discretion. Instead, all the power lies in the hands of the prosecutor.

Greg Lauer, who left the State Attorney's Office in April to go into private practice, says the Florida statute governing drug charges is just poorly written. When he was a state prosecutor, Lauer remembers begging his supervisor on numerous occasions to soften trafficking charges like the one Gurney is facing.

But the State Attorney's Office is supposed to enforce the law, not rewrite it. "No state attorney wants to be called soft on crime," Lauer says.

The longer Tailpipe lives in Florida, the more it looks like Singapore. Maybe the state attorney should offer Gurney the option of being caned.