

If You Are Not In Court You Get Arrested, If The Police Are Not In Court.....

I represented a young man who was charged with driving while impaired after having a wreck in his neighbor's front yard. He had been drinking early in the morning and had gone out for some lunch and not quite made it back home before he ran over a mailbox and tore up his neighbor's yard rather severely. The police arrived sometime after the accident and eventually arrested him and charged him with driving while impaired. I put pressure on the District Attorney by calling the case for trial, something I often do to see what happens after pressure is applied. When we recessed for lunch the Judge told everyone (me, the Assistant District Attorney, my client and the cop) to be back at 2:00 p.m. to do our trial. When we returned after lunch at 2:00 p.m. the police officer was not present, and by 3:00 p.m. when the court was finished with its business other than our trial the policeman still had not appeared. The District Attorney then told the Judge he didn't know why the policeman was not back and moved to continue in part because the District Attorney had not taken the time to find out why the officers had failed to return after being ordered to the court. I objected vigorously and pointed out that if my client hadn't come back we would have arrested him unless he had a very good reason. The Judge denied the District Attorney's motion to continue. The District Attorney then was required to dismiss the case. The State then issued a new warrant for the same charge against my client, and arrested him at midnight at his home. They made a big scene in my clients front yard and took him in his PJ's handcuffed through the yard just to embarrass him in front of his neighbors.

When the case came back to district court on the new warrant, I convinced the Judge to dismiss it on due process grounds (that's explained below). The State has appealed this ruling and we have been through several hearings so far, but certainly by doing all of this work we have gained a substantial advantage for my client. In some cases the State can recharge a defendant after dismissing the charges, but I am arguing that this was a unfair violation of the due process clause (your right to due process means that hearings have to be fundamentally fair) to allow the State to recalendar a case (effectively continuing it) after a Judge has expressly denied the District Attorney's motion to continue. It clearly undermines the Judges authority to control the calendar, and Judges never seem to like it when the District Attorney steps on their toes. You see, I think it's my job to prevent the District Attorney from stomping on your toes or your rights to get a conviction.