

The Rap Sheet

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1 December 2009

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**Members of the Crimes
Against Law Enforcement
Officers Subcommittee are
listed on the back page**

IN THIS ISSUE:

PAGE

Meeting Summary	1-2
Arrest Form Errors	2-3
Case Law	3
PPCC Sub-Committees	4

Summary of PPCC Meeting November 19, 2009

Agencies represented: Miami-Dade PD, Sunny Isles Beach PD, Town of Surfside PD, North Miami PD, Hialeah PD, FDABT, Miami Beach PD, Coral Gables PD

AGENDA ITEMS:

L. C. v. State: This is a 3d DCA case just decided on November 12. The decision is not even final yet, and the Attorney General's Office may be filing a motion for rehearing. The issue in the case was whether a search may be conducted of a juvenile being taken into "custody" as a truant, to be returned to her school. The facts of the case likely account for the outcome: Police came across the defendant, a **truant**, and were going to transport her back to school in the police car. **Prior to placing her in the police car**, the officer conducted a full **search** – turning out her pockets, looking in her back pack, etc. The court indicated that there was no legal basis for such a search prior to placing the defendant into the police car and that the officer's general safety concerns did not provide a legal basis. What was lacking in this case, however, was any kind of a patdown search. The case even cited to some cases that upheld a patdown search of an individual prior to being placed in a police car, but that was not part of the decision in this case. In this unique situation – a truant is not being arrested, just transported back to school – it cannot be a search incident to arrest. Based upon this case, it would be a better practice to first conduct a patdown search for weapons, rather than proceeding directly to a full search.

Officers as (Un)Necessary Witnesses: We discussed the problem of officers who are listed in police reports as "assisting officers" but who, in reality, served little or no direct function in a criminal case and therefore would not be called by the State to testify at trial. While we are required by the rules of discovery to provide the names of all officers on a case – and this would necessarily include all officers who are listed in a police report – we certainly don't want to require all of those officers to come to court when they're not needed, and waste limited resources. The cases brought up as examples of the problem were misdemeanor domestic cases and it may be that the problem exists mostly in this area (in felony cases we classify all of our witnesses according to their involvement in a case and non-domestic County Court largely relies on a standby system) and we are looking into ways to deal with the issue and eliminate unnecessary appearances by officers. You will be advised of the procedure that is developed.

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IMPORTANT!

Next PPCC meeting, **December 16, 2009, 1:00 p.m.**
State Attorney's Office • 1350 NW 12 Avenue • Miami FL 33136
All are invited to attend

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Probable Cause Hearings on Print Burglaries:

There seem to be an increasing number of burglary cases based on a DNA or fingerprint hit that are being set for probable cause hearing by the First Appearance Hearing judge. He has taken the position, and rightfully so, that it is not sufficient to state in the A-form narrative that DNA (or a fingerprint) was found "on the scene". A fingerprint found on the outside of a business may support a trespass, or no charge at all depending on whether the building has a defined curtilage, but a fingerprint on the inside would provide probable cause for a burglary. Please be mindful of this when drafting your A-forms.

Providing Police Reports by Electronic Means:

In an effort to bring the discovery process into the 21st century, I'd like to determine what law enforcement agencies have the capability of providing police reports electronically to our office. This is a preliminary inquiry to get the discussion going; some may have security concerns which will need to be addressed, but for now I'd like to find out how many agencies would be participating in the conversation. Please contact Kristi Bettendorf if your department would like to explore this option.

AVOID A-FORM ERRORS

Errors on arrest affidavits can result in the loss of criminal cases, the release of defendants, and the application of incorrect bond amounts. The following are possible problem areas and suggestions for avoiding them.

UNSIGNED/UNSWORN A-FORMS

When an arrest affidavit is not signed and sworn to, the first appearance judge has no authority to hold a defendant in custody or set conditions of bail. Florida Rule of Criminal Procedure 3.120 provides that committing magistrates may commit an offender to jail or order the defendant to appear before the proper court when a complaint "...is made in writing and sworn to before a person authorized to administer oaths...". If an arrest affidavit is not signed and sworn to, the judge will find that there is no probable cause to hold the defendant and will order his or her release without any bond or release restrictions. Sometimes the presiding judge will give us until the next bonding hearing – very short notice – to secure the arresting officer's presence in court to swear to the A-form; if the officer does not appear, the defendant will be released. The solution for this problem is clear – make sure that an A-form does not leave your possession without having been signed and sworn to.

INSUFFICIENT PROBABLE CAUSE IN NARRATIVE

The narrative portion of an arrest affidavit should set forth all elements of the crimes charged. Where critical elements are not included – value on a grand theft case, the weight of narcotics on a trafficking case, the date of birth of a minor victim – no probable cause can be found for the charged crimes. Occasionally, the judge will agree to a State request to reset the first appearance hearing, giving us an opportunity to secure the presence of the arresting officer so that sworn testimony can be given in court to supplement the affidavit. Sometimes the judge will not reset the hearing, and will simply set a bond on a reduced charge (eg., petit theft, where an amount for grand theft is not included). It is also very important that the narrative section be legible. If all of the elements are included but the hand writing cannot be read, the end result will be the same – probable cause will not be found for the charged offense. Florida Rule of Criminal Procedure 3.133(a)(4) states that "[t]he magistrate shall order the release of the defendant after it is determined that the defendant is entitled to release and after the state has a reasonable period of time, not to exceed 24 hours, in which to establish probable cause." It goes on to specify that such a release must entail no restraints on the liberty of the defendant.

DEFENDANT'S IDENTIFYING INFORMATION

In this day and age when identity theft is common, it is more important than ever that you identify each defendant as accurately as possible on your arrest affidavit. Verify not only the defendant's name, but the spelling of the name. When there is only one letter difference in the spelling of a defendant's name from what his criminal history record reflects, an "alias" will be created for the defendant, making keeping track of his criminal history that much more difficult. In all situations where possible, try to confirm identifying data with some form of ID, always verifying that the written identification is accurate before recording it on your A-form.

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WRONG CHARGE DESCRIPTION OR SUBSECTION

There are many different types of burglary, ranging from a third degree felony (burglary of a conveyance or business) to armed burglary or burglary with an assault (both non-bondable offenses). It is very important that the proper description be listed under "charges". In other circumstances, missing statute subsections can be critical. Section 322.34 is a good example of this; DWLS charges under this section range from a non-criminal infraction [subsection (1)], to a third degree felony [subsection (5)]. While it may certainly be possible to correct these errors at some point down the road in the prosecution process, the charge that will be entered into the system at booking and the type of bond the defendant will be required to pay (or not) may be determined before a first appearance hearing is even conducted. These booking errors can be avoided by being as precise as possible when specifying the charge and the corresponding statute section and subsection.

VICTIM NOTIFICATION INFORMATION

In certain cases, Florida statute 960.001 requires law enforcement agencies to complete a victim notification card, a copy of which is to be submitted with your arrest paperwork. The jail is then required, by the same statute, to notify victims, using the information that you have provided, when certain things occur, such as the defendant's release on bail. In most situations, you will be providing the victim contact information on the back of the pink copy of the A-form. Your failure to provide this information will prevent the jail from being able to make their required notifications, which may result in an increased liability for both agencies.

"HOLD FOR BOND HEARING" SECTION

Be mindful of the section at the bottom of the A-form which you can check off indicating that the defendant should be "...held for bond hearing" (which is really the first appearance hearing). You should utilize this section in situations when the defendant is a flight risk, if the standard bond amount is not sufficient due to the circumstances of the particular case or due to the defendant's prior history, if the defendant is more of a danger to the community than the current charges would indicate – considerations of this nature. If you check off this section, you must appear for the next scheduled first appearance hearing.

DATE, TIME AND PLACE OF CRIME

At the beginning of the narrative part of the A-form there is an introductory section where you are to indicate the date, time and location at which the defendant committed the crime(s) charged. (Note that this is not the same as the arrest date, time and location, higher up on the A-form.) The information in this section can, and usually is, utilized when we request information regarding any possible alibi defense in accordance with Florida Rule of Criminal Procedure 3.200. Once we specify the date, time and place, the defense is only required to provide alibi information as to the specified date, time and place. If the date, time and place information we provide is incorrect, the evidence in the case may be compromised.

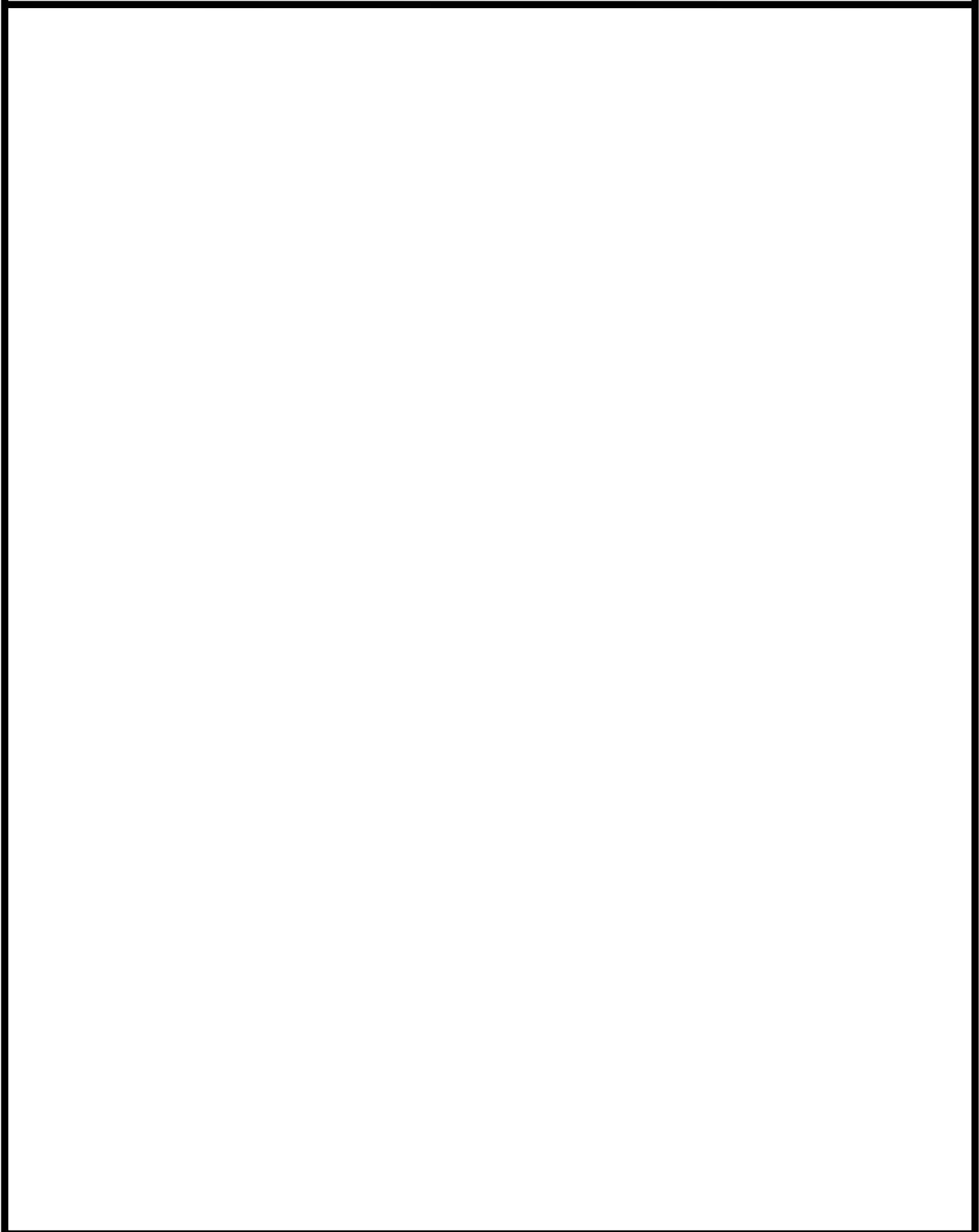
Recent Case Law

Bowers v. State, 34 Fla. Law Weekly D2384a (2d DCA, 11/18/09) This case deals with the "**fellow officer rule**" and how far it can be stretched in "substituting" one officer's testimony for another's. The decision in this case now creates a conflict between District courts in Florida and the conflict was certified to the Florida Supreme Court.

This defendant was stopped by one officer and a second officer was brought to the scene thereafter to conduct a DUI investigation. The defendant was charged with DUI, possession of cannabis and possession of paraphernalia. The defendant filed a motion to suppress in County Court. At the hearing on the motion, the first officer (who conducted the stop) did not appear to testify although he was subpoenaed. Only the second officer testified and he testified as to what the first officer told him was the basis for the initial stop. The defendant's attorney argued that this was impermissible hearsay, and the State argued that it was admissible under the fellow officer rule. The County Court judge suppressed the evidence, based primarily on the fact that the original officer did not testify and that the basis for the original stop was not clear. The State appealed to the Circuit Court and the Circuit Court reversed the County Court ruling holding that the fellow officer rule could be utilized and the second officer's testimony was acceptable to establish the basis for the stop. The Second DCA reversed the Circuit Court and suppressed the evidence, holding that the fellow officer rule was being misapplied. The Court stated that the rule applied to investigation and arrest situations, and imputing the knowledge of one officer to another in providing probable cause for an arrest. It is not a rule of evidence, nor an exception to the hearsay rule and was used improperly in the hearing on this case.

The conflicting case is a 4th DCA case from 2001, Ferrer v. State, 785 So. 2d 709.

All opinions of the Third District Court of Appeal (3d DCA) and the Supreme Court are binding in our Circuit. All other DCA opinions are binding in this District only if there are no contrary opinions in the 3d DCA.



All PPCC Sub-Committees, Chairs and members are listed below. Please contact any of the Co-Chairs or members if you have an issue to be addressed.

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