For the Law Enforcement Agencies of Miami-Dade County

The Rap Sheet

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

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The Rap Sheet E-Mail List

I've recently finished combining and updating the various email lists for *The Rap Sheet* that existed in the State Attorney's Office. If you've received this issue and no longer wish to receive future issues via email, please let me know via email. If you're looking at a hard copy and would like to receive *The Rap Sheet* via email, just send me an email and request it. Please let me know what law enforcement agency you are with and your current assignment. I will do my best to keep this combined list as current as possible.

--- Kristi Bettendorf

Electronic Requests for Police Reports

If your agency would like to receive requests for police reports from the State Attorney's Office via email, please contact Kristi Bettendorf and provide the email address to which you would like the requests addressed.

Scheduling PreFiling Conferences On Retail Theft Cases

When officers make a felony arrest on retail theft cases, they are required to call in and schedule a PreFiling Conference (PFC), even though they will usually not be required to attend the PFC, unless there are additional police-related charges. Cases which fall into this "Retail Theft" category are those where individuals, not store employees, try to conceal and remove merchandise from a store.

When the system by which PFCs are scheduled in the Felony Screening Unit was created about 25 years ago, officers were required to call to schedule their PFCs from the scene, in all cases possible, so that the officer could give civilian victims and witnesses verbal notification of the date and time of the PFC right then and there. Over the years, this system has eroded – although it would certainly be much easier now, what with the prevalence of cell phones. In the case of a retail theft case, however, this procedure should be followed consistently by officers. You have to go to the store's loss prevention office anyway, so there should be no problem with access to a phone. We have experienced great difficulty in getting mailed notices to retail stores, particularly the large ones in malls, in order to give the LPOs sufficient advance notice of the PFC date and time. Officers following this procedure on retail theft cases would veritably eliminate that problem area and we would be able to file many more of these cases. Your adherence to this procedure on felony retail theft arrests would be greatly appreciated! If you have any questions about this procedure, please contact Kristi Bettendorf.

IMPORTANT!

Next PPCC meeting, **Wednesday, September 15, 2010, 1:00 p.m.**
State Attorney's Office • 1350 NW 12 Avenue • Miami FL 33136
All are invited to attend

More Recent Case Law on Search and Seizures Issues

M.R. v. State, 35 Fla.Law Weekly D900a (3d DCA, 4/21/10) The juvenile in this case was seen by officers walking down the street in a "high prostitution area" at 9:30 p.m. The court held that this activity did not give rise to a **founded or articulable suspicion** of unlawful activity, even though one of the officers knew that she had been involved in prostitution on a previous occasion. The officers conducted a *Terry* stop, which resulted in an uneventful conversation with the juvenile, then put her in their patrol car pending a "record search". Because officers were not acting in the lawful execution of their duties, as Section 843.02 requires, the juvenile was not guilty, as a matter of law, of resisting an officer without violence when she tried to escape from the police car.

Whitfield v. State, 35 Fla.Law Weekly D915a (5th DCA, 4/23/10) The defendant was convicted of trafficking in cocaine. The defendant was **stopped for speeding**. The trooper ran a license check and questioned the defendant on a wide range of topics while awaiting the results. At this point, about 6 – 7 minutes into the stop, the trooper asked about the vehicle registration and directed the defendant stay by the trooper's car while he got the registration information from the defendant's son, a passenger in the vehicle, and asked him a series of similar questions. Once the paperwork on the rental of the car had been found to be in order, the trooper checked and found that the vehicle had not been reported stolen. The trooper continued to question the defendant, about whether he had ever been arrested before, what for, and then, whether there were any guns or drugs in the car. When the defendant replied no, the trooper asked for consent to search the car, which the defendant declined. At this point, almost 20 minutes into the traffic stop, the trooper **sent for a canine unit**. The trial court denied the motion to suppress stating that, although the canine search did not begin until a half an hour after the stop, it began within a minute of the trooper finishing up his paperwork and issuing the defendant a written warning.

The appellate court, however, stated that based on case law, absent an articulable suspicion of criminal activity, the time an officer takes to issue a citation should last no longer than is necessary to make any required license or registration checks and to write the citation. A narcotics dog's sniff of a vehicle does not constitute a search and may be conducted during a traffic stop, but must be completed within the time required to issue the citation. The court found that the trooper had completed the routine investigation required to issue the citation within 12 minutes of the stop, but conducted extended interrogation of the defendant. (All of this, by the way, was documented to the minute, and recorded, but the trooper's vehicle so there really is no question about the time involved or the matters being discussed.) The court stated: "Had the officer started and completed his traffic duties instead of expending the majority of his time asking the motorist about matters having nothing to do with the issuance of a traffic citation, the stop would have been completed before the dog arrived to conduct a sniff search".

State v. Brown, 35 Fla. Law Weekly D1072b (3d DCA, 5/12/10) In this case officers in the area of an apartment complex at about midnight, on an entirely different matter, observed the defendant holding an assault-type rifle, walking to a vehicle with its engine running but the lights off. The police ordered the defendant to stop but he disregarded them and ran into an apartment, later learned to be his. The trial court granted the defendant's motion to suppress the gun and drugs found inside when officers followed the defendant in through the open front door.

Warrantless searches or arrests in constitutionally protected areas, notably one's home, are per se unreasonable unless they fall within one of the established exceptions to the warrant requirement. Our District Court held that the facts of this case demonstrate "**exigent circumstances**" and lawful "**hot pursuit**". The trial court's denial of the motion to suppress had been based, at least in part, on the premise that the offenses that the officers had observed and that they were pursuing the defendant about were "only" misdemeanors. The appellate court held that the hot pursuit exception to the warrant requirement applies even when police are pursuing a fleeing misdemeanant (where the misdemeanor in question is punishable by a jail sentence). "The time of day, the presence of an assault-type rifle, the disregarded commands to stop, and the possible threat of an uncooperative suspect with a weapon, were overwhelming reasons to follow Brown into the home." The court further rejected the defense argument that officers were required to "knock and announce" their presence before entering the apartment.

Dixon v. State, 35 Fla. Law Weekly D1298a (4th DCA, 6/9/10) This case involves facts where **exigent circumstances** did *not* exist and the warrantless entry into a home was found not to be justified. Police were responding to a 911 call of a home invasion robbery. An officer spoke with one of the victims outside of the robbery location who advised him where the robbery had occurred and that the robbers had fled. The officer went to the apartment in question and the defendant and his girlfriend answered his knock on the door. He started questioning them about the robbery and, as he did so, he walked into their apartment, without asking for permission. Inside

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the apartment the questioning continued and the officer could see evidence consistent with what the victims were telling him happened. He was again advised that the robbers had fled. At one point as the officer was speaking with the defendant's girlfriend, the defendant went into another room and returned a minute or two later. At this point, the officer said the defendant appeared nervous and agitated and asked the officer to leave the apartment. Instead, saying he was concerned that there might be a suspect in the apartment, the officer asked the defendant and his girlfriend to step outside and the officer searched through the apartment. He saw some narcotics and paraphernalia in plain view as he was looking through the apartment. No robbery suspects were in the apartment. At the hearing on the motion to suppress, three individuals testified to hearing the defendant tell the officer not to enter or not to search his apartment: his girlfriend, a neighbor and a canine officer on the scene.

While the trial court held that the facts of the case constituted exigent circumstances, the appellate court held that the exigency no longer existed at the time the officer arrived at the defendant's apartment. All three victims had advised the officer that the robbers were gone and there was, therefore, no immediate danger or compelling need for police action. In addition, the fact that the defendant did not pose an objection when the officer first entered the apartment cannot be construed as consent. The entry and search were found to be unreasonable and all evidence was ordered suppressed.

T.M. v. State, 35 Fla. Law Weekly D1290b (4th DCA, 6/9/10) An officer observed two juveniles walking through a residential neighborhood in a high crime area at 11 a. m. The officer indicated that he was suspicious that the juveniles were either missing school or about to commit a burglary or drug sale. The officer stopped and questioned the juveniles. They did not act suspiciously or try to flee, were cooperative and respectful. The officer testified that the juveniles' responses to his questions dispelled any concern he had that they were about to commit a crime, but he continued to suspect that they were impermissibly missing school. He did not see any bulges in their clothing nor suspect them of a crime that would involve the use of a weapon, but **patted them down for officer safety**. The officer stated that the basis of his concern for his safety was in the fact that there were two of them and he was alone. As he was patting down one of them, T.M. moved his hand in front of his waistline area. The officer still did not observe a bulge, but when he lifted his shirt the officer saw a baggie containing cannabis. The appellate court reversed the trial court's denial of the motion to suppress on the basis that the officer did not have a reasonable suspicion to believe that the juvenile was armed with a dangerous weapon.

State v. Lopez, 35 Fla. Law Weekly D521a (3d DCA, 3/3/10) This case involves an undercover narcotics purchase. Officers arranged to buy 2 kilos of cocaine from an individual other than the defendant. They had purchased from him before and there was always someone assisting the seller. The seller was being surveilled and officers observed him arrive at a residence and then leave with the defendant, who proceeded to follow him to the scene of the exchange in a separate car. Both cars pulled into a Bennigan's parking lot, the seller on the east side, the defendant on the south side. The defendant remained in his car. The transaction was completed and police moved in to arrest the seller. The defendant tried to leave, but police blocked his car in. On the scene of the stop, the defendant stated that the seller owed him money and that he was going to collect the debt from the proceeds of the sale he knew was going to take place. At the station, the defendant gave a formal statement confessing to his involvement in the drug sale.

The detective testified at the motion to suppress that based upon his experience, a second vehicle follows a vehicle involved in a drug transaction to conduct counter-surveillance and make sure there are no police at the transaction site. He also testified that the defendant's behavior gave rise to his suspicion that the defendant was in contact with the seller during the sale. The trial court ruled that the stop of the defendant was unjustified. The Third DCA, however, stated that the circumstances gave rise to a founded suspicion that the defendant was a principal or accomplice to the ongoing drug transaction. Quoting from the *Terry* case, the court stated that "…it would have been poor police work indeed for the officer to have failed to investigate his behavior".

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.

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