

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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**Note the change in days
for the November PPCC meeting!
The meeting will be held on
TUESDAY, November 16th
at the regular time of 1:00 p.m.**

Summary of PPCC Meeting October 20, 2010

Agencies represented: SAO, M-DPD, Sunny Isles Beach PD, Miami PD, Hialeah PD, Miami Beach PD, Coral Gables PD, Miami Shores PD, Miami Springs PD, North Miami Beach PD, Surfside PD and Florida City PD

Agenda Items:

Designating Transporting Officers:

If an officer's only involvement in an arrest is that he or she transported the defendant to jail, and nothing of an evidentiary nature occurred during the transport (i.e., defendant making a voluntary statement, hiding narcotics in the back seat of the police car, striking the transporting officer, etc.) then under the officer's name on the back of the pink copy of the Arrest Affidavit, the officer should check off "transporting". The State Attorney's Office will then know how to proceed as it relates to our witness lists and discovery and will not require officers to unnecessarily appear in court.

Crimes Against Law Enforcement Officers Subcommittee:

This subcommittee met after the PPCC meeting and discussed a wide range of topics, from membership on the subcommittee, to the impact of the use of tasers on officers' contact with subjects, to any changes that might be needed to procedures. The subcommittee will report the results of its meeting.

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IMPORTANT!

Next PPCC meeting, **Tuesday, November 16, 2010, 1:00 p.m.**
State Attorney's Office • 1350 NW 12 Avenue • Miami FL 33136
All are invited to attend

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Chapter 2010-181: Misrepresenting Military Status:

This new law was inadvertently omitted from the Legislative Update at the September meeting. It became effective on October 1st. It is now a third degree felony for anyone, while soliciting for charitable contributions, to misrepresent themselves to be members or veterans of the armed services and wear the uniform of or any medal or insignia authorized for use by such members and veterans. This is found in new statute section 817.312.

In addition, subsection 496.415(6), dealing with criminal acts in connection with the solicitation of contributions, was amended to include misrepresentation of membership in these same services as a violation, added to law enforcement and emergency service organizations. It is a third degree felony to falsely represent oneself as a member of any of these groups in connection with the planning, conduct, or execution of any solicitation or charitable or sponsor sales promotion.

Issues from the Floor:

Transporting Inmates to the SAO for Interview:

The issue of safety concerns in the procedures for transporting inmates to the State Attorney's Office for statements was discussed. A suggestion was made to inquire into the possibility of establishing a room in the Justice Building so that inmates could be transported by means of the bridge. We will report back on the findings of this inquiry.

The next PPCC meeting will be held on TUESDAY, November 16, 2010 at 1:00 p.m. All are welcome to attend.

Case Law on the Charge of Resisting an Officer

Sauz v. State, 35 Fla. Law Weekly D368a (2nd DCA, 2/12/10) In this case a detective was conducting an investigation into a lewd battery case. Without any intention to detain or arrest the subject, she went to his address. She didn't know what the subject looked like and there were several men there. The defendant gave her a false name and date of birth and told her that Sauz was out of state. When she ultimately arrested him on the lewd battery charge, she also arrested him for resisting without violence for giving her a false name and DOB at that first meeting. The court held that the conviction for resisting without had to be reversed. While the detective was, of course, in the lawful execution of a legal duty (investigating a case), the court cited to case law which states that a defendant can only be charged with giving false information if it is given to an officer during a valid arrest or Terry stop, citing to St. James v. State, 903 So.2d 1003 (2d DCA, 2005).

S.B. v. State, 35 Fla. Law Weekly, D841a (4th DCA, 4/14/10) The Respondent was found guilty in the trial court of resisting an officer without violence. The appellate court reversed the trial court. On patrol at night, officers observed the defendant and another juvenile looking around and "scanning" in the parking lot of an apartment complex. Officers tried to exit their car quietly, but the juveniles apparently heard the car door, they looked in the direction of the officers and took off running. They were subsequently found and arrested for resisting without. The court cited to case law which holds that flight, standing alone, is not sufficient to form the basis of a charge of resisting without. An individual who flees must know of the officer's intent to detain him. Because the juvenile was never ordered to stop by the officers, he cannot be found guilty of resisting without.

S.D.T. v. State, 35 Fla. Law Weekly D879b (4th DCA, 4/21/10) This juvenile was found guilty of resisting without violence. The arresting officer heard a BOLO regarding two individuals (with descriptions) who were suspected of stealing at a Wal-Mart. He then saw two suspects matching the descriptions leaving the Wal-Mart and approached them. He advised them that he wanted to talk with them and this juvenile ran away, despite the officer's command to stop. He was caught shortly and charged with resisting without violence for running from the officer. The juvenile objected to the admission of the content of the BOLO into evidence, labeling it as impermissible hearsay. However, the court found that it was an exception to the hearsay rule because the statement was not offered at trial to prove the truth of its contents – that the juveniles had committed a theft; it was offered to show that the officer was engaged in the lawful execution of a legal duty at the time of the stop. Regardless of the truth of the statements in the BOLO, the officer was justified in relying on it to make an investigatory stop. The finding of guilt was affirmed.

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O. B. v. State, 35 Fla. Law Weekly D1093c (3d DCA, 5/12/10) And just in case you think you understand the case law as it relates to a BOLO showing that an officer is involved in the lawful execution of a legal duty, you need to see this case, decided by our district court. This juvenile and two other youths described themselves as standing under the carport of a residence waiting for a pouring rain to let up. Just as the rain was stopping, a police car pulled up and one of the officers, gun drawn, approached them. They all ran, this juvenile taking a different path than the other two. There was no specific testimony noted about whether any officer ordered the juvenile to stop once he ran; to the contrary, there was testimony from the juvenile indicating that he heard no commands from the officers and he was unaware whether any officer was after him in particular. He was caught and charged with resisting without.

The trial judge found that responding to a BOLO was tantamount to the lawful execution of a legal duty. The Third DCA held that unless the State can establish either that the officers had the requisite reasonable suspicion to detain him or probable cause to make a warrantless arrest, that reliance on the fact that the officer was responding to a BOLO will not, in and of itself, show that an officer was lawfully executing a legal duty. Confusing, yes. What may have made the difference in this case (as compared to the S.D.T. case) is that the appellate court had no idea about the contents of the BOLO. The trial court had ruled the contents of the BOLO inadmissible as hearsay so they were not admitted; all that is known is that the officers were responding to a burglary call. It is not known whether a description of the subjects was even given, much less whether these juveniles matched the descriptions. Had the facts in this case been clearer, it is likely that the court may have come to a different conclusion; as it is, our district has to deal with this case as precedent.

D.W. v. State, 35 Fla. Law Weekly D1413a (3d DCA, 6/23/10) The Third DCA again deals with the issue of "lawful execution of a legal duty" in this case. An officer saw this juvenile and knew that he had an outstanding pickup order. Officers approached the juvenile and told him to stop but he ran and jumped a fence. When he was apprehended, he was charged with resisting without violence. The State argued that it was sufficient that the officer knew that the defendant had a pickup order outstanding to make the arrest. At trial, however, it was necessary that the actual pickup order be introduced into evidence. In this particular case, the judge found the pickup order in a case file of the juvenile's and took judicial notice of it, satisfying this requirement.

L.O. v. State, 35 Fla. Law Weekly D2253a (4th DCA, 10/13/10) Officers were dispatched to a robbery in progress at a certain location involving two black males with a clothing description. An officer who arrived in a couple of minutes was on the perimeter, when L.O. was pointed out to him. He was a black male, but he was alone, dressed similarly but not the same as the BOLO description, and involved in no suspicious or unusual behavior when the officer saw him. He was walking down the street in the middle of the afternoon in a predominantly black neighborhood toward, not away from, the scene of the robbery. The officer approached the juvenile and asked him to identify himself, to which he replied that he wasn't going to give him his name because he hadn't done anything wrong. The officer asked if he had any weapons, to which the juvenile responded again that he hadn't done anything wrong. The officer patted him down and found nothing. The juvenile again refused to give his name and then made a move which the officer interpreted as in preparation to flee, so the officer took him down. He cuffed the juvenile and put him in a police car, at which time the juvenile told the officer his name but again said he had done nothing wrong. Based on these facts, the court ruled that the juvenile was not required to give the officer his name because the officer didn't have sufficient founded suspicion for his investigatory stop and reversed the finding of guilt on the resisting without charge. [Note that had the court found that the officer was conducting a consensual encounter, then the juvenile still would not have been required to give the officer his name or identifying information. Providing such information is only required during an arrest or a lawful investigative stop.]

Faith v. State, 35 Fla. Law Weekly D2258b (1st DCA, 10/13/10) In this case the defendant was the passenger in an automobile stopped for a traffic offense. The officer asked the defendant for identification. The defendant gave a false date of birth and a name other than her current one. The officer thereafter arrested her for obstruction, placed her in the back of the police car and searched her purse, where he found a controlled substance. The appellate court not only reversed the trial court's ruling, finding that the arrest for obstruction was illegal because the defendant was neither under arrest nor subject to a lawful detention when she gave the false information, but also suppressed the controlled substance evidence because it was seized after an unlawful arrest.

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