

The Rap Sheet

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Miami-Dade State Attorney



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

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Summary of PPCC Meeting December 16, 2009

Agencies represented: Coral Gables PD, North Miami PD, Miami-Dade PD, Hialeah PD, Sunny Isles Beach PD, Miami Beach PD, Miami Gardens PD, Hialeah Gardens PD

AGENDA ITEMS:

Contact Information for Victims and Witnesses on A-forms:

It is now even more critical that complete victim and witness contact information be included on the back of the pink copy of the A-form on County Court cases. (It is, of course, important in all cases but more so now on misdemeanor cases due to a change in procedure.) The sounding hearings in County Court (which are hearings after the arraignment but before the trial date where both sides announce their readiness for trial) have been eliminated. These hearings provided us with an opportunity to make sure that we had contact information for all of our necessary victims and witnesses so that they would be noticed for the trial. Due to this change, the ASAs in County Court will likely not see the case until a few days before trial and won't have enough time to find out who the victims and witnesses are and their addresses, let alone issue them summonses for trial. Your assistance in helping insure that these cases are trial-ready will be greatly appreciated.

Impeachment of Officers based on Social Networking Websites:

This issue was suggested for discussion by an officer who saw an article in the LA County Sheriff's Department Newsletter, and the article was most interesting. It referred to a case in New York where an officer was questioned by the defense regarding statements he had posted on his Facebook webpage that portrayed him as a "rogue cop". An example of a posted remark was that he watched the movie Training Day to brush up on "proper police procedure". The defense attorney wanted to show the jury that what the officer wrote about himself on social network websites is how he "really" conducts police work. The officer testified that his internet persona was simply bravado. The major difference between joking around in person and posting it on the internet is that one of them ends up preserved on a digital server. The defendant in the New York case was acquitted in what might have otherwise been considered an open-and-shut case.

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IMPORTANT!

Next PPCC meeting, **January 20, 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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Another article out of southern California cautions officers with regard to messages posted on Facebook, MySpace, Twitter, YouTube, and internet chat rooms as well as e-mail, text messages, answering machine greetings and voice mail messages. It warns against statements that may be taken out of context on cross-examination and used to smear an officer's credibility, integrity or character. Any that may be retrievable by an officer's name may become the basis for cross-examination.

Providing Police Reports by Electronic Means:

Thus far I've only heard from 3 law enforcement agencies (Miami Gardens, Coral Gables and North Miami) who indicate that they have the capability of providing police reports electronically. If any other agencies would like to take part in a discussion of the utilization of this possibility and other technology options, please contact Kristi Bettendorf.

Misdemeanor Bond Hearings:

Our County Court Division indicates that misdemeanor traffic enforcement officers are not required to appear at misdemeanor bond hearings for arrested defendants if you have checked the "hold for bond hearing" box *due to prior traffic arrests or convictions*.

ISSUES FROM THE FLOOR:

Investigation of Identity Theft cases:

A question was asked about an identity theft case where different acts took place in different jurisdictions. Although the law provides that different jurisdictions may investigate an identity theft cases based upon what occurred in that jurisdiction, there is no hard and fast rule about who *should* conduct the investigation. This should be decided based upon the facts of each case.

Recent Case Law

Fields v. State, 34 Fla.Law Weekly D2540b (3d DCA, 12/9/09) The case involves an arrest for **disorderly conduct** which resulted in a charge of resisting with violence. At trial, the defendant was convicted of the disorderly conduct but acquitted of the resisting charge. The disorderly conduct charge was based upon the defendant's actions in standing outside of a bank, screaming profanities into a cell phone. In sworn testimony at PFC, the officer indicated that he was responding to an emergency call of a man with a gun threatening to shoot people, with a brief description of the man, but these facts are not mentioned in the appellate case. The officer sees the defendant (who, per the PFC, matched the description in the call) outside of the bank, yelling obscenities into a cell phone, visibly upset, with a number of people inside and outside of the bank stopped to watch him. The officer approached Fields, gun drawn. They had a verbal exchange which led to Fields pushing the officer. With the assistance of additional officers, the defendant was arrested.

The 3d DCA stated that these facts will not support a conviction for disorderly conduct. Speech alone will not generally support such a conviction. Unless they are "fighting words" or something akin to shouting "Fire!" in a crowded theater, such words are constitutionally protected speech. When the State brought up the issue of the crowd of people having gathered and others avoiding going near the defendant the court, citing to a previous case, stated that the mere fact that other people come outside or stop to watch what is going on is insufficient to support a conviction for disorderly conduct. Instead, there must be some evidence that the crowd is actually responding to the defendant's words in some way that threatens to breach the peace. Such was not the case here. The conviction for disorderly conduct was reversed.

Barlatier v. State, 34 Fla.Law Weekly D2587a (3d DCA, 12/16/09) This case deals with **constructive possession** on a charge of possession of a firearm by a convicted felon. Police were looking for the defendant to arrest him on a warrant and watched him enter and drive off in a vehicle they were watching. At the time the defendant got into the driver's seat of the car, a passenger entered the right front passenger seat. The vehicle was followed until it was boxed in and officers approached both the passenger and driver's side of the vehicle. The passenger was immediately removed from the vehicle. The defendant was ordered out as well and as he stuck his foot out of the vehicle as if to exit, officers observed a gun under the driver's seat. The officer yelled "fifty-five", to signal the presence of the gun. The defendant then made what officers described as a swiping motion with his hand, as if to push the gun further back under the seat and out of view. The car belonged to the defendant's girlfriend, but she testified that when she lent the car to the defendant to drive a few days before there was no gun in the vehicle. The 3d DCA found that all of these elements added

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together provided sufficient evidence of constructive possession to support the jury's guilty verdict. The court relied additionally on the fact that from the time the defendant and passenger entered the car, and remained under police surveillance, there had been no transfer of the weapon from the passenger to the defendant.

C.E.L. v. State, 34 Fla. Law Weekly S663a (Supreme Court, 12/17/09) In this case the Florida Supreme Court resolves a conflict between the Second District and our District and reverses a 3d DCA case (*D.T.B. v. State*) which held that **running from police in a high-crime area**, in and of itself, does not constitute resisting without.

The facts in this case are very similar to those in *D.T.B.* C.E.L., a teenager, was standing in the public area of an apartment complex with another teenager. Upon sight of approaching police, wearing vests that identified them as sheriffs, C.E.L. ran. Police ordered him to stop, but he did not and continued his flight. The 2d DCA held that C.E.L.'s flight fell squarely under the U.S. Supreme Court's *Illinois v. Wardlow* case and upheld his adjudication on resisting without. *Wardlow* basically holds that unprovoked, "headlong" flight from police in a high crime area provides reasonable suspicion for a stop. The 3d District's *D.T.B.* case had held that reasonable suspicion for a stop must exist *before* the flight in order to support a resisting without charge and that *Wardlow* only provided reasonable suspicion for a stop, not the basis for a resisting without charge; this holding is now overruled by the Florida Supreme Court's decision in this case. The initial flight from police does not constitute the resisting without; the crime occurs when the defendant continues to run, ignoring subsequent police commands to stop once the defendant's initial flight provided the reasonable suspicion for a stop. The Supreme Court declined to create a specific rule of law interpreting section 843.02 to require that reasonable suspicion of criminal activity exist before an individual flees.

The concurring and dissenting opinions express concerns about the "societal implications" of the decision. The discussion talks about a distinction being made between how juveniles, in particular, can be treated differently based upon where they live; how there is no hard and fast rule with regard to how an area is designated as a "high crime area". The dissent quotes from the concurring opinion in *C.E.L.*: "I fear there are consequences for our communities if we allow the sale of drugs in poor and ethnic neighborhoods to transform those neighborhoods into "high-crime neighborhoods" where the Bill of Rights means something less than what the original framers intended it to mean for all free people."

Regalado v. State, 34 Fla. Law Weekly D2571a This case discusses the reliability and validity of **information based on an anonymous tip regarding illegal activity**. An officer was approached by an individual who told the officer that a person was "flashing his gun to a couple of friends". He had raised his shirt, exposing the gun, but had not removed it from his waistband. As they were talking, the defendant walked by and the tipster advised him that that was the man he was talking about. The informant would not, however, identify himself to police and thereafter left the scene. The officer followed the defendant and while doing so, saw a bulge in the defendant's waistband. The officer pulled his gun and ordered the defendant to the ground. The defendant, and his friend, complied. The gun in his waistband was seized and the defendant was charged with, and subsequently convicted of, carrying a concealed firearm.

The State asserted that the officer's detention of the defendant and seizure of the firearm was permitted on the authority of *Baptiste v. State*, a 3d DCA case from 2007 that upheld a stop based upon an anonymous tip regarding someone waving a firearm in public when the anonymous tipster arrived on the scene and advised police they had stopped the person he had called about, even though he did not ultimately identify himself, and left the scene as the tipster in this case did. However, the *Baptiste* case was reversed by the Florida Supreme Court in 2008. The Supreme Court held that the tipster remained an anonymous tipster even though he came to the scene and advised police they had the right man, as he did not identify himself. Because police observed no illegal or even suspicious behavior by *Baptiste* when they arrived on the scene, the anonymous tip alone would not provide sufficient basis for the stop.

In this case, however, the 4th DCA did not dwell on the issue as to whether the informant qualified as an anonymous tipster or a more reliable citizen informant. They held that the mere possession of a firearm is not illegal in Florida. Even if it is concealed, it is not illegal if the carrier has a concealed weapon permit. The tipster had not reported any illegal activity with the gun, and the officer observed no conduct which would constitute a crime or impending crime. The court stated that there is no "firearm exception" to the Fourth Amendment. The totality of the circumstances in this case did not provide the officer with sufficient suspicion that a crime had been, was being or was about to occur and, therefore, there was insufficient basis for the stop.

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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