For the Law Enforcement Agencies of Miami-Dade County

The Rap Sheet

Katherine Fernandez Rundle — Miami-Dade State Attorney

1 April 2012

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

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Summary of PPCC Meeting
March 14, 2012

Agencies represented: SAO, M-DPD, M-DPD Crime Lab, Miami Springs PD, Sunny Isles Beach PD, Hialeah PD, Coral Gables PD, Florida City PD, Pinecrest PD

Agenda Items:

Scrap Metal & Copper Wire Theft Task Force:

Miami-Dade County has created a Task Force to address the issue of theft and illegal resale of scrap metals. This has become a public safety issue, with theft of metal materials from utilities' property posing a serious problem with the interruption of electricity and communication services. Various municipalities and government entities will be represented on this Task Force; I have been selected as a representative from the State Attorney's Office and will keep you informed of developments.

Supervisory Structure within the State Attorney's Office:

Officers were reminded of the availability of supervising ASAs to assist them with problematic issues on their cases. Every Assistant State Attorney and paralegal has a direct supervisor, a division chief, who is responsible for those working under him or her within that division. Some of these divisions also have assistant division chiefs. The divisions, in turn, are subject to the supervision of a Chief Assistant State Attorney. The four Chief Assistants supervise all divisions within the SAO, from County Court, and the Juvenile Division, to the felony trial divisions and specialized units. These supervisors are available for officers to consult with, should the need arise.

Issues from the Floor:

A-Form Automation:

Yvonne O'Cana, supervisor of the Case Screening section within the Felony Screening Unit, reported on the progress of the A-Form Automation Project. Trials for the implementation of the Automated A-Form Solution will begin in June of this year. The project requires computer generated A-Forms, completed on computers with Internet access. It is anticipated that implementation of the program will be completed by February, 2013. As this topic was discussed, we also talked about the fact that it is anticipated that by the end of the year, all bookings will be done at TGK. The red light cameras on Northwest 36th Street, apparently a popular route to TGK, have now been activated.

Listing Victim Officer's Addresses:

If an officer is a victim in their personal capacity, it was suggested that arresting officers list them in care of their departmental address, not their home address. In this regard, the listing of the victim officer's departmental ID number would also be helpful.

IMPORTANT!

Next PPCC meeting, **April 18, 2012, 1:00 p.m.**
State Attorney's Office • 1350 NW 12 Avenue • Miami FL 33136
All are invited to attend

Recent Case Law

Strain v. State, 36 Fla. Law Weekly D2792a (4th DCA, 12/21/11) The defendant was convicted in the trial court of both **possession of a firearm by a convicted felon** and **possession of ammunition by a convicted felon**. The District Court held that it was double jeopardy for the defendant to be convicted of both of these offenses if the possession of both occurred at the same time. The state argued that the possession of the items was separate in both time and space, but the court did not agree. The court held that just because the items were *found* at two separate times did not mean that the defendant did not possess both items at the same time.

Mesa v. State, 36 Fla. Law Weekly D2786a (4th DCA, 12/21/11) It does not happen too often that an appellate court "overrides" an objective magistrate's determination that **probable cause** exists **for** the issuance of **a search warrant**, but the 4th DCA did in this case. The search warrant for the defendant's house was sought in the belief that the defendant was operating a marijuana grow house. Police had learned, through a CI, that *another individual* was using *his* home as a grow house. This other person visited the defendant's home frequently and sometimes used the defendant's truck. They lived near each other (but weren't neighbors). A check with FP&L records revealed, according to the officers, "erratic/abnormal patterns of electrical usage". Over and above this information, the factors presented in the affidavit in support of the warrant were 1.) that there was a wood fence surrounding the defendant's outside air conditioning unit, 2.) that detectives heard a humming noise coming from the inside of the house, 3.) that there were sensor lights at the outside four corners of the house, and 4.) that the windows in the house had window treatments that did not allow light to escape.

The appellate court described the four listed factors as otherwise innocent information. There was little detailed information in the affidavit to distinguish these factors from any other houses in the neighborhood. The affidavit contained conclusions without benefit of the underlying facts that formed the basis for the conclusions. The court found lacking any mention of the house having an odor of marijuana coming from it, which should have been apparent – and mentioned in the warrant affidavit – if the officers got close enough to the house to hear the humming noise and look into various windows. The court stated "[t]he more particulars provided within the four corners of an affidavit in support of an application for search warrant, the more a mere possibility, warranting more investigation and surveillance, becomes a fair probability in a 'close call' case such as this case." The court also found that since the affidavit lacked probable cause, that the good faith exception could not be applied in this case.

C.W. v. State, 37 Fla. Law Weekly D34a (3d DCA, 12/28/11) This juvenile was standing in the street, about one and a half to two feet into the roadway, talking to his cousin when officers drove by, having to veer around them because of their place in the roadway. As they passed, an officer called out for them to move out of the roadway. When they did not, the officers pulled over and approached the boys, again ordering them to move out of the roadway. C.W. refused, became belligerent, yelling and cursing at the officers and a crowd gathered. He was arrested for disorderly conduct and resisting an officer without violence. The question decided by the 3d DCA was **whether** or not **the officers were engaged in the lawful execution of a legal duty** at the time C.W. obstructed them, a required element to prove a violation of 843.02. The majority opinion discussed the fact that the disorderly conduct charge arose from an *uncharged* violation of s. 316.2045, a pedestrian infraction for obstructing traffic. The court notes that the Petition for Delinquency also does not charge this violation, nor did it charge the disorderly conduct.

The court cites to previous case law which states that there is a difference between an officer who is engaged in the lawful performance of a legal duty and an officer who is "merely on the job". Some of the legal duties listed in the decision are:

1) Serving process,
2) Legally detaining a person,
3) Asking for assistance in an emergency situation, or
4) Impeding an officer's undercover activity by acting as a lookout during the commission of a criminal act.

Not included but obviously a "legal duty" would be making an arrest. While the court found that the officers' initial request that C.W. move a de minimus distance out of the road was a reasonable part of their job as community safety officers, it held that the officers had no legal duty to insist on compliance and to enforce that insistence with arrest where the record shows that there were no circumstances warranting this. Central to this decision is that there was no traffic on the roadway at the time and that the boys did not, in fact, interfere with any traffic. The mere *potential* to interfere with traffic was insufficient to justify the officers' actions.

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Judge Rothenberg wrote a lengthy and well-reasoned dissent, finding that the officers *were* involved in the lawful execution of a legal duty: enforcing the traffic laws of the state. Unfortunately, it's the majority opinion that counts, so this case was reversed.

State v. Gallo, 37 Fla. Law Weekly D49a (2d DCA, 12/30/11) This case deals with the **"Stand Your Ground Law"**, s. 776.032, Florida Statutes. The decision does not go into detail about the facts of this particular case, beyond describing it as reminiscent of the "shootout at the OK Corral", with numerous people firing guns resulting in the death of one of them. What the decision does discuss is the manner in which it is to be determined whether a defendant is entitled to immunity from prosecution on the basis of s. 776.032. The court stated that the legislature placed the burden of weighing the evidence in "Stand Your Ground" cases squarely upon the trial judge's shoulders. In this case, the judge did exactly what the law requires: she held an evidentiary hearing, made determinations of credibility, weighed the numerous pieces of conflicting evidence, and set forth extensive factual findings in a nine-page written order. The judge ruled that, based upon a preponderance of the evidence (the appropriate burden of proof in these hearings), the defendant was immune from prosecution because he used deadly force in the manner statutorily authorized by s. 776.032. The appellate court found no error in the trial court's procedures, and that the factual findings were supported by substantial, competent evidence.

State v. McCullough, 37 Fla. Law Weekly D49b (2d DCA, 12/30/11) This is another decision in the wake of the **US Supreme Court's ruling in the *Gant* case**. As you will recall, the *Gant* case authorizes the search of an automobile incident to a recent occupant's arrest only if the arrestee is within reaching distance of the passenger compartment at the time of the search or it is reasonable to believe that the vehicle contains evidence of the arrest offense.

In this case, the defendant was arrested on a "warrant round-up". The offense she was wanted on was a sale of cocaine four or five months previously. The court held that it was unreasonable to believe that her vehicle contained evidence of an offense allegedly committed months earlier. The order granting the defendant's motion to suppress was affirmed.

J.J. v. State, 37 Fla. Law Weekly D135b (3d DCA, 1/11/12) This case holds that there is no such offense as ***attempted* battery on a law enforcement officer** because the statute enhancing penalties when officers are victims (s. 784.07) does not include attempted battery as one of the enumerated offenses.

Miami-Dade County v. Asad, et al., 37 Fla. Law Weekly D234a (3d DCA, 1/25/12) This case involves a suit against the county and an officer for **false arrest**. This opinion replaces the court's original decision in 2009. The events that gave rise to this appeal occurred in 1999.

The officer was originally charged in civil court with malicious prosecution, a federal civil rights violation and false arrest. Before the trial even started, the court dismissed the civil rights violation claim. At the conclusion of the evidence in the trial, the county and officer requested the court dismiss the malicious prosecution count; the court denied the motion. The jury returned a verdict in favor of the plaintiffs only in regard to the false arrest count. The defendants (the county and the officer) appealed the court's denial of their motion to dismiss the malicious prosecution count and the 3d DCA agreed. There was absolutely no evidence of malice presented during the trial and the malicious prosecution count should have been dismissed as a matter of law. The remaining problem, the 3d DCA said, was that the evidence presented at trial was relevant to the malicious prosecution claim but not admissible and highly prejudicial on the false arrest claim. After the trial, the county and officer moved for a new trial, but the trial judge denied that motion as well. For all of these reasons, the 3d DCA reversed the case, returning it to the trial court with instructions with regard to what evidence would be admissible on the false arrest claim.

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 Subcommittees, 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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