

The Rap Sheet

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Enforcement Officers
Subcommittee are listed
on the back page**

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Summary of PPCC Meeting March 18th, 2015

Agencies represented: SAO, Miami-Dade PD, City of Miami PD, Miami Beach PD, Aventura PD, Sunny Isles Beach PD, South Miami PD, North Miami Beach PD, Surfside PD, Miami Springs PD, University of Miami PD, Bay Harbor Island PD, Pinecrest PD, Doral PD and Medley PD.

Agenda Items

Domestic Battery by Strangulation – Florida Statute 784.041(2)(a)

An essential element of the charge of domestic battery by strangulation is that the normal breathing or circulation of blood of the victim was impeded by the defendant's action. This must be indicated in the arrest affidavit.

- 2)(a) A person commits domestic battery by strangulation if the person knowingly and intentionally, against the will of another, **impedes the normal breathing or circulation of the blood of a family or household member or of a person with whom he or she is in a dating relationship**, so as to create a risk of or cause great bodily harm by applying pressure on the throat or neck of the other person or by blocking the nose or mouth of the other person. This paragraph does not apply to any act of medical diagnosis, treatment, or prescription which is authorized under the laws of this state.

Identity Theft Cases - Reminder

These cases cannot go forward without the victim's contact information or the issuing bank contact information.

Surveillance Videos

It would be very helpful for officers to look for surveillance cameras near the scene of a crime. There are many instances where videos from surveillance cameras at nearby businesses or homes have led to the apprehension and subsequent prosecution of criminals or have supported the defendant's version of the events. Any relevant video, whether it supports or contradicts any party's version of the facts, should be provided to the SAO during the pre-file stage and preferably should be obtained by the police.

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IMPORTANT!

Next PPCC meeting, **Wednesday, April 15, 2015 at 2:00 p.m.**
State Attorney's Office • 1350 NW 12 Avenue • Miami FL 33136
All are invited to attend

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Property Crimes Presentation by ASA Warren Eth

ASA Warren Eth gave a very informative presentation relating to the investigation and prosecution of property crimes. Best practices include:

- Crime scene detectives or technicians should respond to process burglary scenes. If they're busy, hold the scene until they can respond. Nothing is too small or unimportant
- Do elimination prints. Photograph point of entry, damaged door(s), window(s), etc.
- Chain of custody is crucial. Note and properly record the names of those who have handled evidence.
- Write crime scene report.
- Talk to victims and children if any. Find out if any work was done recently by utility /cable/ security personnel. Some of these companies outsource their work.
- Officers should do area canvas re: any unusual activities, car out of place, etc.
- Look for security cameras that may have recorded the arrival or departure of the burglars. If there is a video, do not have the home owner copy the video. Have a tech respond to view and copy video.
- Do follow-ups.
- Look for MOs. Are you looking for a kid burglar or a professional burglar? Professional burglars usually are focused. They usually target master bedrooms because there are no motion detectors there. They don't waste time with kids' stuff. They'll either empty the safe or take it with them. Kids/juvenile burglars are looking for Xboxes and other kid electronics and they usually trash everything.
- Check your pawnshops for stolen items.
- Work your street contacts to come up with possible leads.
- Do not make a premature arrest. Once an arrest is made, we have 21-30 days to file the case.
- Outreach with other jurisdictions because often they might be dealing with the same offenders and working together may yield the identity of your burglar. Look for links tying victims of similar cases across county lines.
- Community Outreach- Develop an outreach program for your residents. Attend their crime watch meetings. Talk to them about locking their doors, activating their alarm systems, avoiding giving their travel information on social media and watching for unusual activities in their neighborhoods.

Charge Forms / Automated A-Forms

There has been an increase in cases where officers are charging defendant with attempted felony murder when the charge should be attempted 1st or 2nd degree murder. This is a very serious situation because this type of charging error can potentially result in very dangerous individuals being able to bond out on non-bondable offenses.

Next PPCC meeting – Wednesday, April 15th, 2015

Recent Case Law

Compiled by Joe Robinson, Chief of the Felony Screening Unit

Oliver v. State, Fla. L. Weekly D429a (5th Dist.)

The defendant was a passenger in a car stopped for an equipment violation. After the stop, another officer and his K-9 came to the scene so that the K-9 could conduct an exterior search of the vehicle. Before conducting that search, the K-9 officer ordered Oliver and the driver to keep their hands on the dashboard. The officer told Oliver three times to "keep his hands on the f***ing dashboard." After the K-9 alerted the officers to the presence of drugs in the car, Oliver was searched and marijuana and a firearm were discovered on his person. The defendant filed a motion to suppress, claiming he was illegally seized prior to the search of his person.

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The 5th DCA reversed the trial court's denial of the motion, emphasizing that the focus should have been on whether, under the circumstances, a reasonable person would have believed he was free to leave: "We find that a reasonable person would believe, after having been aggressively ordered three times to keep his hands secured on the "f***ing dashboard," that his freedom of movement was restrained."

The court limited its holding: "We are mindful of the dangers inherent in any traffic stop, and police officers can take reasonable steps to protect themselves from these dangers. We do not articulate a bright-line rule that ordering an occupant of a car to either keep his hands in view or on the dashboard always converts a consensual encounter into a seizure. The very nature of a totality-of-the-circumstances test counsels against generalities. However, in this case, the officers had no basis to believe that the occupants of the car constituted a danger. Neither Oliver nor the driver exhibited any furtive or suspicious behaviors. The K-9 officer ordered Oliver to place his hands on the dashboard because that was his routine. The K-9 officer's need to watch the dog perform the search rather than watch the occupants of the car was obviated by the other officer's presence."

Gaines v. State, 40 Fla. D. Weekly D386a (4th Dist.)

A taped interview of the defendant by the police was played for the jury in this case. The defendant had made a motion to redact those portions of the tape in which the detective expressed his opinion that the defendant was guilty and untruthful, and that there was more than sufficient evidence to convict him of the robbery. The trial court ruled the tape of the interrogation would be permitted because it is not uncommon for detectives to tell suspects that they are lying when they believe that the suspect is not being forthright with them.

The 4th DCA reversed, holding "A jury may hear an interrogating detective's statements about a crime when the statements provoke a relevant response from the defendant being questioned. ... "When placed in 'their proper context,' an interrogating detective's statements to a suspect could be understood by a 'rational jury' to be 'techniques' used by law enforcement officers to secure confessions." ... However, "a witness's opinion as to the credibility, guilt or innocence of the accused is generally inadmissible, [and] 'it is especially troublesome when a jury is repeatedly exposed to an interrogating officer's opinion regarding the guilt or innocence of the accused. ... (T)he limited probative value of appellant's statements was outweighed by the prejudicial effect of the detective's opinion as to appellant's guilt. Moreover, the opinion testimony invaded the province of the jury, and appellant's equivocal responses of "All right," when the detective said he was guilty, could be unfairly misconstrued as an admission of guilt. "

Valls v. State, 40 Fla. L. Weekly D503a (3rd Dist.)

The defendant, charged with second degree murder, claimed he fired his gun in self-defense. Whether the defendant could get an instruction for self-defense hinged upon whether the defendant could establish he had a right to be on the property where the shooting occurred, and was thus not committing a burglary. The 3rd DCA reversed the conviction.

While the case and opinion is very fact-specific, the major lesson to draw from the opinion is that a defendant is entitled to a jury instruction on his theory of defense that is recognized by law and which is supported by any evidence presented. The courts said that both existed in this case.

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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