For the Law Enforcement Agencies of Miami-Dade County

The Rap Sheet

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1 August 2012

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

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New Laws Effective July 1, 2012

Chapter 2012-210:

This Chapter makes amendments to section 812.155 which deals with the **failure to return leased property**. Previously, lessors were required to show that notice was sent to lessees via certified mail with a return receipt to receive benefit of the statutory presumption of prima facie evidence of a lessee's abandonment of or refusal to return the property. Now, lessors also have the option of delivering their demand for return of property via a courier service with tracking capability.

A new subsection was added regarding third-party possession of leased property. This subsection states that possession of the leased property by a third party does not alleviate the lessee of their contractual obligations and is not a defense against a lessee's failure to return the property unless the lessee can provide, to a court or the lessor, documentation that shows that the personal property was obtained without the lessee's consent. I presume a police report would fill the bill here.

Those in the car rental business now have statutory authority, in subsection 812.155(8), to report a vehicle that is not returned at the conclusion of a lease as stolen to law enforcement, provided that the lessor has satisfied the requirements of this section.

Chapter 2012-35:

The circumstances under which a misdemeanant may be referred to a **pretrial substance abuse education and treatment intervention program** have been expanded. Florida Statute subsection 948.16(1)(a) now provides that if a person charged with a nonviolent, non-traffic related misdemeanor is identified as having a substance abuse problem, and has not previously been convicted of a felony, the person may be eligible for such a program. The eligible charges have been expanded to include, in addition to misdemeanor possession of drugs under Chapter 893 and possession of drug paraphernalia, prostitution, possession of alcohol by a minor and possession of a controlled substance without a valid prescription under section 499.03.

Chapter 2012-39:

There were some changes made to section 810.145 which deals with **video voyeurism**. The sentencing provisions in subsection (6) now vary depending upon the age of the offender. If a person under 19 violates this section, it's a first degree misdemeanor. If a person 19 or older commits the violation, it's a third degree felony. "Residential dwelling" has now been added to the list of places where there is an expectation of privacy. A second violation of this section has now been raised from a third degree to a second degree felony. Violations of subsection (8)(a) have also been raised to second degree felonies.

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IMPORTANT!

Next PPCC meeting, **September 26, 2012, 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 2012-97:

This long and expansive bill deals with many areas related to **human trafficking**. Violations of chapter 787 (kidnapping, false imprisonment, enticing a child, human trafficking) are added to the list of crimes which may investigated and prosecuted by the Statewide Prosecutor. They are also a proper subject matter for the statewide grand jury.

New section 480.0535 requires specified identification documentation for those employed by, performing massages at, or operating a massage establishment. The ID must be displayed at the request of a Department of Health investigator or a law enforcement officer. A first violation of this new section is a second degree misdemeanor, a second violation a first degree misdemeanor and a third or subsequent violation a third degree felony.

A conviction for a violation of section 787.06 (human trafficking) qualifies for a "sexual predator" and "sexual offender" designation. The definition of "coercion" for purposes of section 787.06 has been expanded to include enticing or luring someone by fraud or deceit and providing Schedule I or Schedule II drugs to such person for the purpose of the exploitation. Several new definitions are added to the section and the definition of human trafficking is expanded to include the enticement or maintenance of another person for the purpose of exploitation.

As for the human trafficking violations, they are now separated into several different subsections depending upon the type of coercion used, including sex trafficking and involuntary servitude, and most have been elevated to first degree felonies. Human trafficking for commercial sexual activity in which any child under the age of 18 is involved is a first degree felony punishable by life. If any child involved is under the age of 15, it is a life felony. If the defendant had a reasonable opportunity to observe these minors, the state need not prove that the defendant knew the child's age. Each child victim involved is a separate crime with separate punishment authorized. Any parent, legal guardian or person having custody or control of a minor who sells or otherwise transfers custody of said minor knowing, or in reckless disregard of the fact, that the minor will be subject to human trafficking commits a first degree felony. Any real or personal property used in the commission of human trafficking is subject to seizure and forfeiture.

The current offense of human smuggling (787.07) is elevated from a misdemeanor to a third degree felony.

Chapter 2012-159:

This new law covers a spectrum of **servicemembers and veterans issues**. The chief judge for each circuit is authorized to establish a "Military Veterans and Servicemembers Court Program". Statutes also create the "T. Patt Maney Veterans' Treatment Intervention Act" and misdemeanor and felony diversion programs for eligible servicemembers and veterans who suffer from a military-based illness injury, substance abuse disorder, or psychological problem. They operate largely as 'regular' diversion programs do, but with services geared to the needs of servicemembers and veterans. The law also addresses similar programs as conditions of probation or community control.

New Laws with Earlier Effective Dates:

Effective April 13, 2012:

Chapter 2012-108:

This chapter excepts from the licensure provisions for carrying a concealed weapon or firearm those who are servicemembers (members of the United States Armed Forces on active duty, members of the Florida National Guard and the United States Reserve Forces) and veterans of the United States Armed Forces who have been honorably discharged. This is found in an amendment to section 790.062.

An amendment to section 790.15 makes it a first degree misdemeanor to recklessly or negligently discharge a firearm outdoors on any property used primarily as the site of a dwelling or zoned exclusively for residential use.

Effective April 27, 2012:

Chapter 2012-152:

A new exception to the rule against hearsay has been created in subsection 90.804(2)(f). If a statement made be a person not available to testify is offered against a party that wrongfully caused, or acquiesced in wrongfully causing, that person's unavailability as a witness, and did so intending that result, then it will be admissible as an exception to the hearsay rule.

Recent Case Law

Thornton v. State, 37 Fla. Law Weekly D586a (4th DCA, 3/7/12) Police received a **tip** (in an email) from a source who wished to remain **anonymous**. The tipster indicated that he worked in a store at a strip mall and that there was "suspicious activity" occurring in the strip mall. He described that there were males, mostly with dreadlocks, congregating at a particular barber shop; that people would walk up to the front door of the shop, make a call, and then they would enter the barbershop through the back door. This would occur at night, and sometimes these males would leave the motor running on their vehicles while they entered the barber shop.

Detectives went to investigate, at 4 in the afternoon, and did find a group of 10 to 15 males standing near the barber shop and some, including this defendant, had dreadlocks. The detectives drove by the shop a few times, then stopped and got out of their car. When they did so, most of the men entered the barber shop. The defendant was seated in a parked vehicle with the windows down and the doors closed. As the detective approached the car, the defendant looked at the center console in the car, then the detective and he may have placed something in the console but the detective couldn't see what. The detective asked the defendant what he'd done and the defendant denied going into the console. He asked the defendant to get out of the car, for officer safety. As he did, it appeared that he reached back into the console before exiting the car – the defendant's body was blocking a clear view by the detective. The detective observed the defendant cup something in his hand and put it in his pocket. When asked what he had placed in his pocket, the defendant replied "nothing". The defendant appeared nervous and fidgety. The detective did not observe the clear outline of a weapon on the defendant, but told him he was going to do a pat down search for weapons. When the detective started to do so, the defendant swatted his hand away. At that point, the detective arrested him for resisting without violence. A search revealed drugs and cash.

To conduct an investigatory stop, the officer must have **reasonable suspicion** that the person "has committed, is committing, or is about to commit a crime". Whether an officer has reasonable suspicion for a stop depends on the totality of the circumstances, interpreted in light of the officer's knowledge and experience. In the legal analysis of these facts, the court held that a seizure occurred when the detective asked the defendant to get out of the car. The court also found that the detective lacked reasonable suspicion to detain the defendant. A tip from an anonymous source is very low on the "reliability scale". Further, the tip itself was vague and contained information about "suspicious", not criminal, activity. [Although let's face it, we all know they were dealing drugs out of the barber shop.] What the detective did observe - that the defendant appeared nervous, reached into the console and that he lied to the detective - did not provide the necessary reasonable suspicion for the detention. Because of this, the physical evidence seized should have been suppressed, and the conviction was reversed.

In addition, because the court found that the officer lacked reasonable suspicion for the detention, the detective was not in the "lawful" execution of a legal duty as to support the resisting without violence conviction, and that charge, as well, was reversed.

C.M. v. State, 37 Fla. Law Weekly D635c (3d DCA, 314/12) This case originated in 2010 (not currently, when this has become such a hot topic). This juvenile was charged with possession of cannabis and possession of drug paraphernalia, as a result of the search of his backpack by school police. He was found in possession of a green, leafy substance and a glass ear dropper, converted to a makeshift pipe, with residue. The officer testified that, in his experience, the substance looked and smelled like marijuana. (The judge had determined that the school police officer could testify as an expert on the identification of marijuana.) The items seized had been sent to the lab for testing, however no lab results were introduced into evidence at the trial. On cross examination, the officer admitted that, although he is familiar with the look and smell of marijuana, he understood that synthetic marijuana looks the same and has the same effect as marijuana.

The juvenile testified that the green, leafy substance wasn't real marijuana, but that it was **synthetic marijuana** called "Mr. Nice Guy" which he had legally purchased at a dollar store. He said that it looks and smells just like "real" marijuana and that he had used the ear dropper/pipe to smoke "Mr. Nice Guy" before his arrest.

After the defense rested, the state recalled the officer who testified that real marijuana had a smell distinct from synthetic marijuana. On cross examination again, he acknowledged that he had only seen one type of synthetic marijuana and that he had received no training with regarding to synthetic marijuana.

The judge dismissed the possession of cannabis count, holding that there was a reasonable doubt whether the substance the juvenile possessed was, in fact, cannabis and not some synthetic form not prohibited as a controlled substance. However, he found the juvenile guilty of the paraphernalia charge. On appeal, the 3d DCA held that if there was reasonable doubt on the cannabis charge, then there must be the same reasonable doubt as to the paraphernalia charge. Possession of paraphernalia requires proof that the paraphernalia be used (or possessed with the intent to use) to inject, ingest, inhale, etc., into the body a substance controlled in Chapter 893. Since synthetic marijuana was not a substance controlled under Chapter 893, the paraphernalia charge must be reversed and dismissed.

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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