FOR THE LAW ENFORCEMENT AGENCIES OF MIAMI-DADE COUNTY

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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Summary of PPCC Meeting January 21st, 2015

Agencies represented: SAO, Miami-Dade PD, City of Miami PD, Miami Beach PD, Aventura PD, Sunny Isles Beach PD, Surfside PD, Miami Springs PD, University of Miami PD, Bay Harbor Island Hialeah and Opa Locka PD.

Agenda Items:

Retail Theft from a merchant

We now have specific retail theft charges under 812.014 that should be used for all retail theft cases. They are as follows:

F/2-- RETAIL THEFT FROM MERCHANT $20,000-$100,000--812.014(2)(b)

F/3--RETAIL THEFT FROM MERCHANT $300 OR MORE--812.014(2)(c)

M/1--RETAIL THEFT FROM MERCHANT 1D/$100+/-$300--812.014(2)(e)

M/2-- RETAIL THEFT FROM MERCHANT 812.014(3)(a)

M/1—RETAIL THEFT FROM MERCHANT /PRIOR CONVICTION-- 812.014(3)(b)

F/3—RETAIL THEFT FROM MERCHANT /TWO OR MORE CONVICTIONS-- 812.014(3)(c)

Enhanced Retail Theft under 812.015

812.015(8) and (9) provide enhanced penalties for certain types of theft and should be used whenever appropriate. The relevant subsections are as follows:

Except as provided in subsection (9), a person who commits retail theft commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084, if the property stolen is valued at $300 or more, and the person:

(a) Individually, or in concert with one or more other persons, coordinates the activities of one or more individuals in committing the offense, in which case the amount of each individual theft is aggregated to determine the value of the property stolen;

(b) Commits theft from more than one location within a 48-hour period, in which case the amount of each individual theft is aggregated to determine the value of the property stolen;

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IMPORTANT!

Next PPCC meeting, **Wednesday, February 18, 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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(c) Acts in concert with one or more other individuals within one or more establishments to distract the merchant, merchant's employee, or law enforcement officer in order to carry out the offense, or acts in other ways to coordinate efforts to carry out the offense; or

(d) Commits the offense through the purchase of merchandise in a package or box that contains merchandise other than, or in addition to, the merchandise purported to be contained in the package or box.

(9) A person commits a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084, if the person:

(a) Violates subsection (8) and has previously been convicted of a violation of subsection (8); or

(b) Individually, or in concert with one or more other persons, coordinates the activities of one or more persons in committing the offense of retail theft where the stolen property has a value in excess of $3,000.

Arrest Charge /Electronic A-Forms

This item has been on the agenda for several months now. There was been no reported problem with multiple defendant cases. However, we have had numerous cases from several police agencies where officers enter the arrest charge by its title but fail to ensure that the appropriate subsection and or degree are indicated, resulting in defendants having to pay higher bonds or alternatively defendants being released on non-bondable offenses that are incorrectly entered as bondable offenses.

Issues from the floor

Yvonne O'Cana, the Case Screening supervisor addressed the following issues:

- She reiterated the need for officers' schedules to be updated. She is seeing a trend where officers who call to schedule a pre-filing conference, are saying their schedule varies, which may cause them to be set off duty.
- She asked that officers be prepared to provide case information when they call Case Screening. It's inefficient for an officer to call while driving and then ask the Case Screening clerk on duty to hold.
- She advised that when a police case number is incorrect, the lead officer must notify her at 305 547-0237, go to the Clerk's office to effectuate the needed change and notify Miami-Dade Records.

Next PPCC meeting – Wednesday, February 18th, 2015

Recent Case Law

Compiled by Joe Robinson, Chief of the Felony Screening Unit

State v. Platt, 40 FLW D208b (2nd District)

It is not necessary for a defendant to be convicted of burglary for a conviction of possession of burglary tools to stand.

In this case the defendant was found inside a vacant house, in possession of wire snips, a screwdriver, a crescent wrench, a socket wrench, and a utility knife. The back door and the hinges had been tampered with, although the extent to which was conflicting.

The jury found the defendant guilty of the lesser crime of trespass and of felony possession of burglary tools; and the trial judge subsequently reversed the conviction for possession of burglary tools, reasoning that the defendant could not be convicted of this charge if he had not been convicted of the burglary.

The Second DCA correctly pointed out that *"Here, Platt was found guilty by the jury of the lesser-included offense of trespassing. Trespassing is specifically included as an offense that will support a finding of guilt for possession of burglary tools. § 810.06, Fla. Stat. (2012) ("Whoever has in his or her possession any tool, machine, or implement with intent to use the same, or allow the same to be used, to commit any burglary or trespass shall be guilty of a felony of the third degree . . . ." (emphasis added)). As such, and contrary to the trial court's belief, the jury could have acquitted Platt of burglary and still properly found him guilty of possession of burglary tools."*

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The court continued: *"In this case, there was evidence to show that Platt had a wide array of tools on him that fall within the ambit of burglary tools, properly defined by the trial court during jury instructions as "tool[s] or implement[s] that [are] intended to use or allowed to be used in the commission of the burglary or the trespass." Further evidence established that Platt had entered an abandoned house and that the door had been tampered with, kicked in, or completely removed from its hinges. Given these facts, the jury could have reasonably concluded that Platt had used or intended to use the tools to effectuate entrance into the house to the exclusion of every reasonable hypothesis of innocence."*

L.A.R. v. State, 40 FLW D219a (2nd District)

This case points out an important principle: Finding a defendant's DNA or fingerprints at a crime scene, say inside a burglarized residence, may not be sufficient with which to obtain a conviction. Where the evidence against the defendant is wholly circumstantial, the State must be able to prove the evidence was made or created at the time of the crime.

In this case the defendant's fingerprints were found on a bag containing a newspaper that was left in the vehicle. Where the State failed to prove that the fingerprints could only have been made at the time the crime was committed, the trial court erred in denying the motion for judgment of acquittal.

S.S. v. State, 40 FLW D240a (4th District)

Two Miramar police officers responded to a dispatch, and observed 20-30 juveniles "exhibiting hand gestures, aggressive behavior, screaming obscenities and cursing across the street". Half of the group fled at the sight of police. The rest were ordered to sit on the ground while the officers investigated what was going on. All complied except for the defendant, who refused and told the officer to "go to hell". When the defendant then started to walk away, an officer grabbed the defendant's arm. The defendant pushed the officer, attempted to punch him and continued to further resist officers in restraining her. The defendant was charged with and convicted of resisting without violence.

The Fourth District Court of Appeals, in a 2-1 decision, reversed the conviction, reasoning the officer lacked a founded suspicion of a crime on the part of the defendant, a necessary predicate for an investigatory detention. The majority found that the evidence indicated that the defendant was only engaging in screaming and cursing, and held that this is insufficient to constitute disorderly conduct. To "*prove disorderly conduct based on words alone, the State must show that the words either caused a crowd to gather, thereby resulting in safety concerns, or that the words incited a crowd to engage in an immediate breach of the peace."*

The court then held: " *In the present case, although there was testimony that the juveniles were exhibiting "hand gestures" and "aggressive behavior," this testimony related to the juveniles' behavior as a group, and not to appellant specifically. Rather, as to appellant, the evidence showed only that appellant engaged in screaming and cursing, which was insufficient to constitute disorderly conduct. … (t)here was no evidence that appellant was fighting or any evidence that appellant instigated the crowd. Because the officer did not have reasonable suspicion that appellant was committing the offense of disorderly conduct, the officer was consequently not engaged in the lawful execution of a legal duty, and thus appellant could not be convicted of the crime of resisting without violence."*

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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