For the Law Enforcement Agencies of Miami-Dade County

The Rap Sheet

Katherine Fernandez Rundle — Miami-Dade State Attorney

1 January 2013

POLICE-PROSECUTOR COORDINATING COMMITTEE

Steering Committee:

Kristi Bettendorf, ASA, Chair
State Attorney's Office
(305) 547-0220
e-mail:
KristiBettendorf@MiamiSAO.com

José Arrojo, Chief ASA
State Attorney's Office
(305) 547-0309
e-mail: JoseArrojo@MiamiSAO.com

Naim R. Erched, Assistant Director
Police Services
Miami-Dade Police Department
(305) 471-2625
e-mail: nerched@mdpd.com

Frank Ledee, ASA
State Attorney's Office
(305) 547-0853
e-mail: FrankLedee@MiamiSAO.com

Chief Fred Maas
Sunny Isles Beach PD
(305) 947-4440
e-mail: mikegrand@mindspring.com

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

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The time of the PPCC Meeting has been changed to 2:00 p.m.

Summary of PPCC Meeting December 19, 2012

Agencies represented: SAO, M-DPD, Aventura PD, University of Miami PD

Agenda Items:

Noise Violations:

We discussed the Florida Supreme Court case decided on December 13, 2012, *Florida vs. Catalano*, 37 Florida Law Weekly S763a, which deals with this issue. This involves violations of section 316.3045, the operation of radios or other mechanical sound-making devices or instruments in vehicles. The statute prohibits any person operating or occupying a vehicle from operating or amplifying the sound produced by a radio, tape player or other mechanical sound-making device or instrument so that it is plainly audible from a distance of 25 feet or greater. Exceptions to the application of this section are made for law enforcement vehicles, emergency vehicles, and motor vehicles used for business or political purposes which use sound-making devices in the normal course of conducting business.

The constitutionality of the statute was challenged on several fronts: because it was vague, overbroad, invites arbitrary enforcement and impinges upon the right to free speech. First, the court found that it was not unconstitutionally vague. The term "plainly audible" beyond the 25 feet standard provides fair warning of the prohibited conduct and provides an objective guideline – distance – to prevent arbitrary and discriminatory enforcement. In addition, DHSMV has promulgated rules which further state the standards to be use in determining whether a violation has occurred.

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IMPORTANT!

Next PPCC meeting, **January 16, 2013 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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With regard to whether the statute is overbroad, this doctrine applies when legislation criminalizes constitutionally protected activities along with unprotected activities, by sweeping too broadly and infringing upon fundamental rights. While the State argued that there is no constitutionally recognized right to play loud music, the Court stated that the right to play music, including amplified music, in public areas is protected under the First Amendment. The right, nevertheless, is subject to reasonable limitations as to the time, place and manner of the protected speech; these limitations, however, may not be content based. While this statute initially appears to apply to all vehicles, subsection (3) then excepts "motor vehicles used for business or political purposes".

The court stated that the statute, as written, treats commercial and political speech more favorably than noncommercial speech. The court discarded the State's argument that these restrictions were based upon a valid public safety concern, stating that this is not generally considered a compelling state interest. It is, more accurately, the state's interest in protecting the public from excessively loud noise on public streets, and to support this public interest it must be content-neutral, which this statute isn't.

Lastly, the State argued that subsection (3) should be severed from the statute, thereby eliminating the offending content-based exception. The court reviewed the statute's legislative history and found that it could not do so and maintain the legislative purpose of the statute. As always, this decision does not become final until the mandate is issued.

Written Sworn Statements:

Not to beat a dead horse…but I received many requests for the written sworn statement form and just as many questions from those who requested it. One agency indicated that the form they use also has a place for a Notary Public to attest to a witness's signature, asking if this was "okay". It is, of course, and provides an alternative method of swearing to the truth of the contents of a statement by signing it. Assuming, however, that there won't always be a notary handy, the portion of the form that makes reference to statute section 117.10 should be included on every such form. You'll also notice that there is more contact information requested on this form (name, address, three possible phone numbers and an email address) than you may have seen on others. This is because it is most critical that we have sufficient contact information for our victims and witnesses so that we will be able to keep in touch with them throughout the prosecution process. A written, sworn statement may enable us to file a case where a victim or witness has not come in or contacted us during the pre-filing stage, but if we lose contact with the victim/witness during the pendency of the case, the result is the same – the charges will have to be dropped. The more contact information, the better!

The Time for Future Meetings:

It was suggested that our current meeting time, 1 p.m., may act as a deterrent to meeting attendance. Following discussion, it was decided to move the meeting time to 2:00 p.m. Until further notice, all PPCC meetings will be held on the third Thursday of the month at 2:00 p.m.

The next PPCC meeting will be held on January 16, 2013 at **2:00 p.m.**

Recent Case Law

I. M. v. State, 37 Fla. Law Weekly D1791a (2d DCA, 7/27/12) This is the story of a juvenile, a public library and an off-duty deputy sheriff. The deputy was outside of the library speaking with a group of kids about horseplay within the library, when I.M. interrupted, yelling profanity and racial slurs at the deputy. He yelled at the group of teenagers that they did not have to listen to the deputy. Three times the deputy instructed I.M. to leave, but he did not. Then as the deputy approached him, I.M. got on his bike and tried to flee. The deputy arrested him for **trespass** after warning and **obstruction**.

Because the head librarian did not appear for trial, I.M.'s attorney moved to exclude any hearsay testimony by the deputy that the head librarian had given him authority to issue trespass warnings. This motion was granted and the appellate court reversed the finding of guilt on the trespass charge because the state failed to establish the deputy's authority to issue the trespass warning. Because the arrest for trespass was not lawful and the deputy was not executing a legal duty at the time the juvenile tried to ride away on his bike, the obstructing charge was also reversed. The court further held that the obstruction charge could not stand on its own, holding that if a police officer is not engaged in executing process on a person, is not legally detaining that person, or has not asked the person for assistance with an ongoing emergency that presents a serious threat of imminent harm to person or property, the person's words alone can rarely, if ever, rise to the level of an obstruction.

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State v. Wilburn, 37 Fla. Law Weekly D1769a (4th DCA, 7/25/12) This case deals with the issue of whether a visitor to a residence where a **warrantless search** is being conducted is subject to detention by police. Based on a tip that narcotics and firearms were being sold from a specific apartment, officers went to the apartment and obtained a consent to search from the tenant of the apartment. The defendant was a **visitor at the apartment**, and he was asked by police to step outside. Once outside the apartment, a detective asked the defendant for identification. As the defendant was removing ID from his pocket, a Ziploc baggie containing cocaine rocks fell to the ground. Citing to prior decisions, the court held that if a residence is being validly searched – even if it is not pursuant to a search warrant – it is proper for officers to detain and conduct a search of the individuals found at the residence for safety purposes.

A.T. v. State, 37 Fla. Law Weekly D1832a (4th DCA, 8/1/12) The issue decided here is whether the officer had sufficient **reasonable suspicion to detain** A.T. An officer was dispatched on a call regarding a suspicious vehicle. When he arrived at the dispatch location he found a vehicle parked there with three people standing around it. A.T. was one of these people. The officer testified that he detected the odor of burning marijuana in the area. When asked if he could tell from which individual the odor was emanating, the officer responded "It was in the general area". The officer asked the people for ID; the other 2 complied with the request but A.T. said "I don't need to give you my ID" and proceeded to walk away. The officer grabbed him by the arm, but he continued to pull away and was arrested for resisting without violence. The defense argued that this was merely a consensual encounter and that the juvenile was free to walk away as he did. He urged that the officer did not observe anything that would give rise to a reasonable and well-founded suspicion that A.M. was engaged in unlawful activity. The appellate court agreed and found that the officer did not observe any of the individuals committing a crime, nor observe any furtive movements, and none of them tried to run away. The odor of marijuana in the "general area" did not give the officer reasonable suspicion to detain the juvenile. The finding of guilt was reversed.

J.W. v. State, 37 Fla. Law Weekly D1843a (3d DCA, 8/1/12) This case deals with **abandonment** as it relates to search and seizure. Officers conducted a "drive by" at a location where individuals were alleged to be selling drugs. As an officer drove by, he observed J.W. walk briskly into the front yard of a house and hand a black pouch to another person. This person then placed (not tossed or thrown) the pouch under the platform-raised house. The officer exited his car as the pouch was being placed under the house and asked the 2 of them to sit down on the porch. Although they both did so initially, J.W. then got up, walked to the front door of the house and tried to enter it. The officer told J.W. to sit back down. The occupant of the house tried to deny entrance to J.W. The officer grabbed J.W. by the shirt, pulled him out of the doorway, handed him off to another officer and went to retrieve the pouch. Naturally, cocaine was found in the pouch. Two separate issues were addressed here: whether the cocaine should have been suppressed as a violation of the law of search and seizure, and whether the charge of resisting an officer without violence could stand.

The court said that the question was not whether J.W. abandoned the pouch and its contents, but whether by his actions and words, he abandoned his reasonable expectation of privacy in the pouch and its contents. The court referred to cases from other districts which had held that when defendants hid or concealed property they had effectively abandoned it. In this case, the court pointed out a critical difference: it was not the defendant, but another person, who hid the pouch under the house. When the defendant gave the pouch to this person, he relinquished possession, custody and control of the pouch to a third person, who then had exclusive possession, custody and control over the pouch and its contents. The court held that they did not even have to address the question of abandonment, because J.W. did not establish that he even had **standing to object to the search and seizure.**

After the juvenile was handed over to the second officer, he turned, slapped at the officer's hand holding onto his clothing and fled. The officer chased J.W. and ordered him to stop, but he kept on running. All of this occurred before it was found that the pouch contained drugs. In order to convict someone of resisting without violence, the state must first prove that the officer was engaged in the lawful execution of a legal duty. Flight, on its own, will not form the basis of a resisting without violence charge unless the state can also prove that the officer had an articulable, well-founded suspicion of criminal activity that justifies the officer's detention of the defendant. The first officer testified, and the evidence supports him, that at the time he approached J.W. he was conducting a consensual encounter. Until the drugs were discovered and the officer was provided with the evidence of illegal activity, there was insufficient evidence to support a resisting without charge.

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.

CASE INTAKE SUBCOMMITTEE
CO-CHAIRS:
Marie Jo Toussaint, ASA, SAO (305) 547-0255;
e-mail: Marie Jo Toussaint@MiamiSAO.com
Ivonne V. Duran, Police Legal Bureau
Miami-Dade P.D. (305) 471-2561
e-mail: ivduran@mdpd.com
Committee Members:
Det. Paul Manzella, SIBPD
Det. Octavia Bridges, UMPD
Lt. Efren Lopez, M-DPD

COMMUNICATIONS SUBCOMMITTEE
CO-CHAIRS:
Lt. J. C. Rodriguez, M-DPD, (305) 548-5774;
e-mail: jcrodriguez@mdpd.com

Committee Members:
Lt. Gladys Amato, MPD
Major Michael Mills, SMPD
Capt. Wendy Mayes-Sears, M-DCR
Major Kathy Katerman, NMBPD
Regla Dominguez, MBPD
Oliver Spicer, Jr., M-DPD
Ray Araujo, ASA, SAO

CRIMES AGAINST LEOs SUBCOMMITTEE
CO-CHAIRS:
José Arrojo, ASA, SAO (305) 547-0309;
e-mail: JoseArrojo@MiamiSAO.com
Chief Steven Steinberg, Aventura PD (305) 466-8996;
e-mail: SSteinberg@AventuraPolice.com

Committee Members:
Lt. Lazaro Artime, Hialeah PD
Abbe Rifkin, ASA, SAO
Det. Robert Garland, M-DPD
Lt. Willie Hill, Pinecrest PD
Susan Leah Dechovitz, ASA, SAO
Ofcr. Nelson Delgado, VGPD
Audrey Frank-Aponte, ASA, SAO
Lt. Jerome Berrian Jr., MBPD
Regla Dominguez, MBPD
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Ofc. Alexander Martinez, Corrections
Sgt. Carlos Arguelles, M-DPD
Rebecca Gutjahr, ASA, SAO
Captain Luis Bazo, M-DPD
Sgt. Michael Weissberg, SMPD

JUVENILE SUBCOMMITTEE
CO-CHAIRS:
Leon Botkin, ASA (305) 637-1300
e-mail: LeonBotkin@MiamiSAO.com
Sgt. Melissa DeJong, CGPD (305) 460-5632
e-mail: MDeJong@CoralGables.com

Committee Members:
Major. Ian Moffett, MPD
Ellen Skidmore, SAO
Sgt. Mark Schoenfeld, MBPD

PAWNSHOP SUBCOMMITTEE
CO-CHAIRS:

Committee Members:
Det. Melissa DeJong, CGPD
Pat Kiel

DOMESTIC CRIMES SUBCOMMITTEE
CO-CHAIRS:
Leah Klein, ASA, SAO (305) 547-0132;
e-mail: LeahKlein@MiamiSAO.com
Capt. Janna Bolinger-Heller, M-DPD, (305) 418-7218
e-mail:jbh@mdpd.com

Committee Members:
Carrie Soubal, SAO
Sarah Poux, MBPD

RAP SHEET SUBCOMMITTEE
CO-CHAIRS:
Kristi Bettendorf, ASA, SAO (305) 547-0220
e-mail: KristiBettendorf@MiamiSAO.com
Committee Members:
Ed Griffith, SAO

ROLL CALL/RIDE-ALONG SUBCOMMITTEE
CO-CHAIRS:

Committee Members:
Audrey Frank-Aponte, ASA, SAO
Brenda Mezick, ASA, SAO
Rebecca Gutjahr, ASA, SAO

TRAINING SUBCOMMITTEE
CO-CHAIRS:
Susan Dechovitz, ASA, SAO; 547-0309
e-mail: SusanDechovitz@MiamiSAO.com
Tom Headley, ASA, SAO; 547- 547-0186
e-mail: TomHeadley@MiamiSAO.com

Committee Members:
Maj. Ian Moffett, MPD
Det. David Adlet, EPPD
Chief Van Toth, Hialeah Gardens PD
Oliver Spicer, Jr., M-DPD
Sgt. Lynnise Jones-Curry, M-DPD
Ofcr. Chad Rosen, Surfside PD
Capt. Luis Bazo, M-DPD
Barry Mankes
Ofcr. Alexander Martinez, Corrections
Richard Moss, Director, Miami Dade College School of Justice
Sgt. Michael Weissberg, SMPD

OPERATIONS SUBCOMMITTEE
CO-CHAIRS:
Major Kathy Katerman, NMBPD, (305) 948-2929,
kathy.katerman@nmbpd.org
Dreama Oliver, SAO, Administrator, Felony Operations,
(305) 547-0307, dreamaoliver@miamiSAO.com

Committee Members:
Jay Pollen, MPD

LIAISON SUBCOMMITTEE
CO-CHAIRS:
Kathleen Hoague, SAO, (305) 547-0522;
e-mail: KathleenHoague@MiamiSAO.com
Maria Diaz, SAO, (305) 547-0331;
e-mail: MariaDiaz@MiamiSAO.com
Lt. J. C. Rodriguez, M-DPD, (305) 548-5774;
e-mail: jcrodriguez@mdpd.com

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