FOR THE LAW ENFORCEMENT AGENCIES OF MIAMI-DADE COUNTY

The Rap Sheet

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July 2014

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

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There will be no
Police-Prosecutor Coordinating Committee
Meeting in July or August

The next scheduled meeting after the summer hiatus
will be on September 17, 2014 at 2:00 p.m.
and will include the annual Legislative Update

Summary of PPCC Meeting June, 2014

Agencies represented: SAO, Miami-Dade PD, City of Miami PD, FDLE, Coral Gables PD, Miami Beach PD, Miami Springs PD, Aventura PD, Sunny Isles Beach PD, Florida City PD, Surfside PD, Miami Gardens PD, Hialeah PD, North Miami PD, North Miami Beach PD, Bay Harbor Islands PD, Key Biscayne PD, Pinecrest PD and University of Miami PD.

Agenda Items:

Company Representatives

In most cases involving business victims, the SAO is provided with names and contact information of workers who can testify to the facts of the case but who do not have authority to provide the company's position on sentencing. Officers are encouraged to obtain the name and contact information for the business manager or owner.

Paperwork and Videos

We are seeing an increase in the number of cases where relevant video and paperwork (property receipts, copy of the defendant's statement, rights waiver form, copies of checks etc.) are not provided at the pre-filing conference stage. All relevant documents and videos, relating to a case must be brought to the SAO so they can be provided timely in discovery. Otherwise, we must use additional resources and time to obtain them and file an amended discovery. In addition, in cases involving co-defendants, property receipts should clearly indicate what was recovered from each defendant.

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IMPORTANT!

Next PPCC meeting, **Wednesday, September 17, 2014, 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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Failure to Schedule pre-filing conferences

We continue to monitor the situation. List of no calls cases were provided to representatives of the police departments present at the meeting.

E-Notify Reports

We had a brief discussion about the necessity for police departments to monitor their e-notify database with the goal of reducing non-appearances which results in cases being no-actioned

Automated A-Forms

Training is on-going.

LEO witnesses

All essential witness officers must be listed on the arrest affidavit. Getting information about the officer who found the contraband or who interviewed the defendant at the first PFC creates unnecessary delay in resolving cases.

Issues from the Floor

An Id theft Committee was created

The Pawn Shop Committee addressed some of the issues faced by victims in reclaiming their property. It is recommended that stolen items found at pawnshops be impounded and that if property is released to the victim that it be photographed showing the serial number and any other unique characteristics. It was also suggested that police departments conduct random inspection of pawnshops.

One of the police departments brought in copies of an Emergency Arrest Form, last used in 1992 in the aftermath of Hurricane Andrew. Miami Dade PD and certain other departments still have them in stock for use when and if needed.

Case Law discussed – Finley v State, 39 FLW D1107a (Fourth District) and McClamma v. State, 2014 FLW 18771510 (Fla.App.2 Dist)

Next PPCC Meeting – September 17, 2014.

Recent Case Law

Compiled by Joe Robinson, Chief of the Felony Screening Unit

E.V., a juvenile, v. State, (Third District). Opinion filed May 21, 2014.

This case involves whether the interaction between the juvenile defendant and the arresting officer was a voluntary encounter or a non-consensual detention. In ruling for the State, the trial court accepted the officer's version of the facts, which is as follows:

"The officer testified that after observing E.V. standing outside of a gas station for approximately thirty minutes, he decided to investigate. He therefore exited his patrol car and asked E.V. to come towards him. As he and E.V. walked towards each other, the officer got closer to E.V. and smelled burnt marijuana emanating from E.V.'s clothing. When he asked E.V. about the marijuana smell, E.V. immediately handed the officer a small baggie of marijuana and told the officer where E.V. had acquired it."

The Third District Court of Appeal upheld the trial court's finding, examining the following factors:
*"… in the instant case only one officer was present. There was no evidence that the officer activated any emergency equipment on his police vehicle (no lights or sirens were used), drew or displayed his weapon, touched or restrained E.V., or did anything to block E.V.'s exit or hamper E.V.'s movement. The encounter took place outside in a public place. At no time did the officer make a showing of authority or demonstrate aggressive or coercive behavior towards E.V. In fact, E.V. himself testified that, when he came out of the gas station, the officer pulled up and "he **asked** me come over here. . . . I proceeded to come to him." (emphasis added). At no point did the officer demand compliance—he simply asked E.V. if he would speak with him. E.V. was free to walk away and go about his business or to decline to speak with the officer, which is the very hallmark of a consensual encounter. Thus, the encounter was consensual, and E.V.'s motion to suppress the evidence was properly denied*."

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State v. Marsh, (Fourth District) Opinion filed May 7, 2014.

The issue in this CCF case was whether the firearm was sufficiently concealed to permit a conviction for CCF. The facts are that as the officer approached the defendant's home on a probation sweep, he noticed Marsh and another man "hiding behind a vehicle and squatting behind the vehicle." The officer asked both men to step away from the vehicle and they were frisked for weapons. The officer then "did a quick glance of the area [where the men were seen hiding]" and, "using his flashlight, 'observed a weapon above the wheel well on the back tire of the vehicle.'" Marsh told the officer the weapon was his.

In a pretrial motion the defendant claimed that since the officer saw in plain view a firearm on top of the rear tire of the driver's side he "was not carrying the firearm in such a manner as to be hidden from ordinary sight", as the case law in this area requires, particularly the 1999 Florida Supreme Court case Dorelus v. State. The trial court granted the defendant's motion and dismissed the case.

The 4th DCA reversed the trial court, holding that under Dorelus, *it is certainly conceivable to infer that one cannot be said to have "concealed" – as a matter of law – that which is immediately recognizable by officers as a firearm. The entirety of the Dorelus opinion, however, does not dictate such logic. Dorelus explicitly states that an officer's immediate recognition of the object as a firearm, while relevant to the issue of concealment, is "not the only method to resolve the issue of concealment as a matter of law."*

The 4th DCA concluded that *"taking all of the facts of this case in the light most favorable to the State, we find that the issue of concealment was improperly determined by the trial court as a matter of law" and reversed the order dismissing the information against Marsh. "*

"Unlike Dorelus, there was evidence in this case – especially when drawing all reasonable inferences in favor of the State – that Defendant attempted to position the firearm "in such a manner as to conceal the firearm from the ordinary sight of another person." § 790.001(2), Fla. Stat. (2012); contra Dorelus, 747 So. 2d at 373 ("There is . . . no indication of any attempt on the defendant's part to hide the presence of the firearm . . . ."). By placing the firearm in the wheel well of the vehicle next to which Defendant was seen "crouching" and/or "hiding," one may certainly surmise (by an exercise of "common sense") that such placement of the firearm was an attempt to conceal the weapon from the ordinary sight of another person within the meaning of the statute – even if the attempt was insufficient to shield the firearm from the perceptive gaze of the officer who also happened to be standing at the perfect vantage point to see the gun. In fact, the arresting officer testified that he was able to see the gun only because he "got a good angle." The issue of concealment is ordinarily an issue for the trier of fact."

R.A.S. v. State, (Second District) Opinion filed June 25, 2014

A Hillsborough County deputy was looking for R.A.S. because he had been reported absent from school. The deputy spotted him and asked him to come over to talk to him. R.A.S. said he was on his way to school. R.A.S. accepted the deputy's offer of a ride to school. The deputy told him to empty his pockets before getting into the car; he did so except for one rear pocket. He then agreed to the deputy's request for a "weapons patdown". The deputy patted the unemptied pocket and felt a small "squishy bulge". The deputy asked him what was in the pocket. R.A.S. pulled out of plastic baggy of cannabis.

The Second DCA threw out the conviction, holding that although a police officer may frisk a person for weapons before allowing them to ride in his vehicle, the prior directive to R.A.S. to empty his pockets amounted to a full search, without legal justification. *"Ordering someone to remove items from his pockets has the same legal effect as an officer actually reaching into the pockets to search. Sanders, 732 So. 2d at 21. The deputy did not have a reason to think that R.A.S. was carrying a weapon or contraband. Thus, the initial search had no legal basis… When R.A.S. did not remove the contents of his back pocket, the deputy asked for and obtained the youth's consent to conduct a pat-down search of that pocket. But the illegal search had already tainted his consent and rendered any evidence discovered as 'fruit of the poisonous tree."*

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The court continued: *"We recognize that, at the outset, the deputy properly could have conducted a pat-down for weapons instead of the illegal search. But he did not feel an object that remotely resembled a weapon in R.A.S.'s back pocket. … (W)hen law enforcement is arresting a criminal suspect, the officer may conduct a warrantless search incident to that arrest in order to disarm a suspect before taking him into custody 'and to preserve evidence for trial.'… But when taking a truant into custody, the only concern is for officer safety—no crime has been committed and, accordingly, there is no need to preserve evidence of a crime. The deputy here knew that the "squishy object" in R.A.S.'s pocket was not a weapon. Therefore, he had no legal basis for questioning R.A.S. further about the contents of the pocket. R.A.S.'s production of the contraband was a direct consequence of the initial illegal search and seizure, and there was no "unequivocal break" in the chain of illegality.""*

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.

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