

The Rap Sheet

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June 2013

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Against Law
Enforcement Officers
Subcommittee are listed
on the back page**

IN THIS ISSUE:

PAGE

Meeting Summary	1-2
Case Law	2-3
PPCC Subcommittees	4

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 18, 2013 at 2:00 p.m.
and will include the annual Legislative Update

Summary of PPCC Meeting May 15, 2013

Agencies represented: SAO, M-DPD, Surfside PD, Aventura PD, Sunny Isles Beach PD, University of Miami PD, FDLE, Pinecrest PD

Agenda Items:

Smallwood v. State - Florida Supreme Court case re: Searching Cell Phones:

On May 2nd, the Florida Supreme Court ruled in this case that the police cannot search a person's cell phone which is on the person at the time of a valid arrest as a search incident to arrest once the cell phone has been taken from the arrestee. The police can still seize the phone, the court held, but a search warrant is necessary before the information, data and content of the cell phone can be accessed and searched by law enforcement. The court said that it was limiting its holding to the facts of this particular case, so it is possible that situations may exist where the search of a seized cell phone may be upheld, but these situations are going to depend entirely on a detailed analysis of the facts of each particular case. Unless it is clear that the search of a cell phone will be upheld, securing a warrant is the preferred course of action.

Continued on next page

IMPORTANT!

Next PPCC meeting, **Wednesday, June 19, 2013 at 2:00 p.m.**
State Attorney's Office • 1350 NW 12 Avenue • Miami FL 33136
All are invited to attend

Continued from previous page

A good faith argument can be made for situations where the seizure and search of the cell phone was made after April 29, 2011 (when the legal precedent for doing so was established) but before May 2nd. These will be addressed on a case-by-case basis.

House Bill 691:

This bill was passed by the Legislature, but, as of this writing, has not yet been signed into law by the governor. Instead of amending Florida statute 817.568, the Legislature created a new section, 817.5685, creating a new offense entitled "Unlawful possession of the personal identification information of another person".

As you are aware, prosecution under section 817.568 requires proof of an intent to fraudulently use the personal identification information; this section does not require such proof. It makes the possession of the personal identification information of another without authorization a first degree misdemeanor if there are four or fewer individuals, and a third degree felony if the personal identification information of 5 or more individuals is involved. There is an inference included in this new section that possession of the personal identification information of 5 or more individuals, unless satisfactorily explained, gives rise to an inference that the person who used or was in possession of the information did so knowingly and intentionally without authorization.

There are some exceptions to the application of the section: the parents or legal guardians of a child can have the child's information, likewise the guardian of an adult, the employee of a government agency in the ordinary course of business, those involved in a lawful business who possess the information in the ordinary course of business and someone who finds a card or document issued by a government agency and is trying to return it. There are also a couple of affirmative defenses. The law states that a violation of this new section does not preclude prosecution for a violation of 817.568 or any other law.

The only downside with creating a new section (rather than amending 817.568) is that it can be, at most, a third degree felony, and the range of penalties for violations of 817.568 go all the way up to life felonies with minimum mandatory sentences under certain circumstances. If this is signed by the governor, it will become effective October 1, 2013.

Updates from the Floor:

It was reported that **bookings at TKG** will commence on Monday, June 10th. The video hook-up for the bond hearings won't be ready until July, however, the June 10th date for all bookings was reported to be a firm date.

We were shown an example of the new **automated Arrest Affidavit**. We should begin to start seeing them in use in a couple of months.

The next PPCC meeting will be held on Wednesday, June 19, 2013 at 2:00 p.m.

CASE LAW

B.L. v. State, 37 Fla. Law Weekly D2640d (4th DCA, 11/14/12) This case deals with issues of **standing to challenge a search** and seizure and **consensual vs. investigative stops**. On the night in question, officers were parked in their vehicle at the corner of a park, watching the people who entered after dark. One of the officers saw 3 people enter the park and shone the spotlight on his vehicle on them and approached them. He saw that they appeared to be juveniles and said he wanted to speak with them for a minute. While he was about five feet away from them, B.L. handed a sweatshirt to his female companion. Concerned, the officer grabbed for the sweatshirt, before B.L. had totally relinquished possession of it, and felt a large metal object in it. He thought it was a gun, but unwrapped it and found it was a knife.

The trial court had denied B.L.'s motion to suppress, holding, in accordance with the State's argument, that he was attempting to abandon the property and had, therefore, abandoned his privacy interest in the sweatshirt. Under this argument, the only individual who had standing to object to the search was the female. The appellate court, however, did not agree with the trial court and held that because B.L. had not yet completed handing over the sweatshirt to the female, that he still retained some level of a privacy interest in the sweatshirt and its contents and did have standing to object to the seizure and search.

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Taking up the issue of the nature of the encounter, the court started by stating that whether an encounter rises to the level of an investigatory stop or remains a consensual encounter is a question of fact. An investigatory stop requires articulable suspicion; a consensual encounter does not invoke *any* constitutional safeguards. Since there was no articulated reasonable suspicion in this case, a fact which the State conceded, if the stop was found to be investigatory, to be determined by the totality of the circumstances, then the search would fall. The court found that two of these circumstances – the illumination of the individuals with the spotlight on the officer’s vehicle, and the officer grabbing B.L.’s sweatshirt while he still possessed it – transformed the consensual encounter to an investigatory stop. The case was reversed and remanded.

June v. State, 37 Fla. Law Weekly D2691e (1st DCA, 11/26/12) This case also involves a **consensual encounter** that became an **investigatory stop**, but with a different outcome.

An officer saw the defendant riding his bike along a roadway and approached him to speak with him. The officer didn’t activate any of the emergency equipment on his vehicle, nor order him to stop. He started to talk with the defendant and stated that he had no reason to believe that the defendant was involved in any illegal activity. The officer asked the defendant for ID, which he provided, and did a warrant check. The officer testified that when they first began to talk, the defendant was being agreeable, but he kept reaching into his pockets. Eventually, the officer asked for consent to search him, but the defendant refused. The officer asked the defendant if he had any contraband on him, to which the defendant said no, but he did have a pocketknife in his right front pants pocket. As they continued to talk, the officer asked the defendant to stop reaching into his pockets, which he did initially, but then reached into his pockets 2 or 3 more times. The officer told the defendant he was going to conduct a pat-down for safety reasons. The officer first secured the pocketknife, then patted his other pockets when the officer felt, based upon his training and experience, what he believed was a baggie containing rock cocaine. He then removed a baggie containing rock cocaine. Imagine that...Well anyway, the 1st District agreed with the trial court that the officer had a legal right to conduct a pat-down for weapons when June said he had a pocketknife in his pocket, even though the consensual encounter had been transformed into an investigatory stop as soon as the officer ordered him to keep his hands out of his pockets. [FYI: the districts in Florida are split on this issue. The 2nd and 5th districts have held that an officer’s request to remove one’s hands from a pocket does not convert a consensual encounter into an investigatory detention; the 1st, 3rd and 4th districts have held that it does. Since ours is the 3d District, we are bound by its holding on this point.]

The court also agreed with the trial court that the **“plain feel”** doctrine applied in this case since the officer’s pat-down was minimal and his training and experience enabled him to immediately identify it as a baggie containing rock cocaine.

State v. Leonard, 38 Fla. Law Weekly D41a (3d DCA, 12/19/12) This case began with anonymous calls to the police that “Odie”, who was wearing dark clothing, was selling drugs at a particular intersection. The detective who received the information knew the defendant and proceeded with another detective to the location – a high-crime area where narcotics are sold – and saw the defendant. The detectives called out to the defendant by name, asking him to “come here”, but the defendant fled. The detectives pursued him on foot and saw him enter a residence through an open door. A resident at the house permitted the detective to enter and the defendant was seen throwing a bag. The defendant resisted being detained. The bag the defendant had thrown was retrieved and found to contain cocaine.

The 3d DCA held that it was not necessary to determine whether the police had a well-founded suspicion of criminal activity when they initially approached the defendant and attempted to stop him. Because the defendant did not acquiesce to the officers’ show of authority and the officers had not physically restrained the defendant prior to the defendant’s abandonment of the cocaine, the defendant was not “seized” within the meaning of the 4th Amendment prior to his abandonment of the cocaine. Based on the facts in the case, including the defendant’s flight in a high crime area and the discarding of the bag of cocaine as detectives approached, the police possessed the necessary well-founded suspicion of criminal activity. The court held that the Motion to Suppress should not have been granted and reversed and remanded the 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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