

# The Rap Sheet

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Subcommittee are listed  
on the back page**

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### Summary of the February 17th, 2016 PPCC Meeting

**Agencies represented:** SAO, Miami-Dade PD, Miami Beach PD, Sunny Isles Beach PD, South Miami PD, Homestead PD; Medley PD, Miami Gardens PD, Aventura PD, Surfside PD and Opa Locka PD

#### Agenda Items

**Probation Searches** – Defendants placed on probation must adhere to a number of terms and conditions. One of these conditions is allowing probation officers to visit their residences and conduct random searches. For safety reasons, probation officers routinely have police officers accompany them to defendants' residences. Any contraband found during these searches can be the basis of a probation violation. Absent a search warrant, such contraband would be suppressed in a new criminal proceeding unless the search was supported by reasonable suspicion.

**Failure to Return Personal Property** – In order to prove the 3<sup>rd</sup> degree felony charge of failure to redeliver hired or leased personal property or equipment, we must show among other things that the lessee failed to return the property or equipment after receipt of, or within 5 days after return receipt from, the certified mailing of the demand for return of the property or equipment. Merchants are sending letters demanding payments and/or arrangements for payments and/or the return of property or equipment. On occasion, the lessee makes a payment or two and then stopped paying and the company files a police report, based on the original letter. This is not appropriate as the statute requires a demand for the return of the property at the termination of the period for which the property or equipment was leased.

Once the lessee has failed to make payments, letters asking for payments, arrangement for payments and/or the return of the property or equipment can be sent. Then if **no payments or arrangements for payments are made and the property or equipment is not returned**, a certified letter, return receipt requested, **terminating the contract and demanding the return of the property or equipment**, should be sent, in accordance with section 812.155, Florida Statutes.

*Continued on next page*

## IMPORTANT!

Next PPCC meeting, **Wednesday, March 16, 2016**  
State Attorney's Office • 1350 NW 12 Avenue • Miami FL 33136  
All are invited to attend

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(sample letter) DEMAND FOR RETURN OF PROPERTY

You are hereby notified that the leasing contract you signed on \_\_\_\_\_, has been terminated for failure to meet your payment requirements. This is a demand for the immediate return of \_\_\_\_\_ that you leased from us on \_\_\_\_\_. Pursuant to Florida Law, you have **5 days from the date of this notice to return our property or equipment**.

As indicated on your rental agreement, failure to return rental property or equipment upon expiration of the rental period and failure to pay all amounts due (including costs for damage to the property or equipment) are **prima facie evidence of intent to defraud, punishable in accordance with section 812.155, Florida Statutes**.

Unless our property is returned 5 days from the date of this notice, we will refer this matter to the \_\_\_\_\_ Police Department for criminal prosecution.

**Automated A-Forms** - 93% of all arrest affidavits were submitted electronically in December, a 2% increase from November stats.

**Protocol for Officers Appearance at Pre-filing Conferences PFCs)** – Case Screening has reported that on occasion officers would advise that they had off-duty work or training and could not attend a PFC on a particular day, when their schedule on the E-Notify showed they were on regular duty. A question was raised as to whether court appearances have higher priority than off duty work or training. Most departments present reported that court appearances superseded off-duty work and routine training. Others were asked to check with their individual department as to its protocol.

In addition, part of the problem could be that officers schedules shown on E-Notify were not updated in a timely manner.

**Next PPCC Meeting – March 16<sup>th</sup>, 2016**

### Recent Case Law

- State v. Albert – 41 Fla. L. Weekly D443

The defendant was arrested on drug charges and filed a motion to suppress, arguing that his interaction with K-9 officer Jeremy Pergerson, was not a consensual encounter. Officer Pergerson testified that he was in a “high crime” and “high drug” area near a house where he knew illegal drug activity took place. He saw the defendant with some other individuals and based on his training believed that their actions were consistent with a drug transaction. However he admitted he did not have enough evidence to make an investigatory stop and therefore, while standing outside his patrol car, asked the defendant to come to him. He did not try to keep the defendant from leaving, did not have his weapon drawn and his lights and siren were not activated. The defendant came over to him after the second request. The officer further testified he could smell the odor of marijuana on the defendant. A search of the defendant revealed cocaine and hydromorphone, for which he was arrested. The defendant testified that he walked over to the officer after the officer threatened to release his K-9 if he did not comply.

The trial court, finding the testimony of the officer credible, determined that the officer had not threatened the defendant and that the defendant had been free to leave. It concluded that there had been no seizure and denied the motion. Months later, the defendant filed for a rehearing which was heard by another judge. The defendant citing

*Beckham v. State*, 934 So. 2d 681 (Fla. 2d DCA 2006), argued officer Pergerson's repeated request constituted a show of authority. The Court found that the officer's repeated request constituted an investigatory stop and held that the circumstances surrounding the stop did not indicate that the officer had a reasonable or well-founded suspicion of criminal activity to justify an investigatory stop and consequently granted the defendant's motion to suppress. The State appealed.

The question before the 5<sup>th</sup> DCA was whether the officer calling the defendant to come to him twice constituted a consensual encounter or an investigatory stop. The Court found that Beckam was not helpful in answering the initial question because the officers' actions in that case constituted an investigatory stop which was not supported by a *well-founded articulable suspicion of criminal activity*. The Court reminded us of the three levels of police-citizen encounters as defined in *Popple v. State*, 626 So.2d 185, 186 (Fla. 1993), by the Florida Supreme Court. *The first level is consensual and involves minimal police contact. 626 So.2d at 186. During such an encounter, a citizen may choose to comply with or ignore an officer's requests. Id. The second level, investigatory stop, permits an officer to reasonably detain a citizen temporarily if the officer has a reasonable suspicion that the citizen has committed, is committing, or is about to commit a crime. Id. The investigatory stop requires a well-founded, articulable suspicion of criminal activity to avoid violating a citizen's Fourth Amendment rights. Id. The third level of police-citizen encounter is an arrest which must be supported by probable cause that a crime has been or is being committed. Id.*

After analyzing a number of other cases, the Court found that the circumstances involved in this case, where the officer made no attempt to keep the defendant at the scene, did not display a weapon or activate his vehicle emergency devices, constituted a consensual encounter where the defendant was free to leave. The order granting the motion to suppress was reversed.

Tyler v. State – 41 Fla. L. Weekly D369

The defendant was a passenger in a vehicle where the driver was arrested for driving with a suspended license and possession of marijuana. The owner of the vehicle could not be located and the officer conducted an inventory search of the vehicle prior to having it towed. In the trunk was found a suitcase bearing the defendant's name with a pocket inside of which was found a sock containing live ammunition. The defendant was arrested and charged with being a delinquent in possession of ammunition. The defendant filed a motion to suppress which was denied. He entered a plea and subsequently appealed the denial of his motion to suppress, arguing that the State "*did not meet its burden in establishing an exception to the warrant requirement for searches.*"

The Court acknowledged the necessity of true inventory searches: "*the needs of protection of the owner's property, and protection of police against potential danger from such things as explosives*" so long as the "*search is conducted in good faith and not ..... as a subterfuge to conduct a warrantless search for incriminating evidence.*" *In addition, the impoundment and inventory of a vehicle and its contents must be performed in accordance with the governmental entity's standardized operating procedures.*

The officer testified that he was trained to conduct inventory searches of vehicles. He also testified as to his department's impoundment of vehicle policy and its search and seizure policy. However, no testimony was elicited from the officer that indicated his "*search of the vehicle and his training regarding such searches was pursuant to a set of standardized procedures related to inventory searches.*" The Court also found that the record of the case was not sufficiently developed..... to undertake a totality of the circumstances analysis in response to the State's alternate argument that the search was valid because the officer had probable cause to search the vehicle after finding marijuana on the driver.

As a result the Court, finding that the State had failed to prove the search fell under the inventory exception to the warrant requirement for searches, reversed and remanded the case back to the trial court to vacate the defendant's conviction and sentence, grant his motion to suppress and allow him to withdraw his plea.

**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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