

The Rap Sheet

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March 2017

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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 the February 22nd, 2017 PPCC Meeting

Agencies represented: SAO, Miami-Dade PD, City of Miami PD, Hialeah PD, Coral Gables PD, Sunny Isles Beach PD, Aventura PD, Surfside PD, Florida Highway Patrol, Medley PD and University of Miami PD.

Agenda Items:

Carrying a Concealed Firearm – Reminder- A person carrying a concealed firearm in his house/yard or in his business who is not a convicted felon, is not violating the CCF statute.

Reproduction of videos stored on a cell phone – Videos stored on cell phones can be downloaded into CDs or DVDs by our litigation support unit department. The ASAs assigned to the case will escort an officer or a civilian to the 4th floor to have it done.

Presentation by ASA Kristina Mills, Chief of Misdemeanor Domestic Crimes Unit, County Court

• **Collection of Evidence:**

- In any domestic violence case alleging physical contact, photos of the scene should be taken regardless of whether there is injury. It is extremely helpful to our cases to take photos of the scene, especially when there are signs of a struggle to provide context for the victim's/witness' testimony at trial.
- Don't forget to collect and impound evidence from the scene that can be useful at trial (i.e., bloody t-shirts, items that the defendant used to strike the victim, photos of damaged items, video surveillance, etc.). Inform the prosecutor that this evidence has been collected.

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IMPORTANT!

Next PPCC meeting, **Wednesday, April 19, 2017 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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- Include in your reports or inform the prosecutor during your pre-file whether you or other officers were wearing body cameras or had dash-cams or other recording devices active so that we know to request this footage as early as possible.
- Misdemeanor DV trials tend to be mostly victim and officer testimony only, which makes them hard to prove. **So do keep in mind that any additional evidence you can document or collect or any essential witness you can find will strengthen our cases.**
- **Police Reports:**
 - ***BRING YOUR REPORTS TO YOUR PRE-FILE CONFERENCES!*** This includes OIRs and any other supplemental reports, photos, written statements, etc. ASAs and Paralegals are not supposed to take your pre-file statement without them. They will turn you away to be rescheduled if you do not bring or otherwise produce your reports prior to or during your pre-file conference.
 - Include victim and witness phone numbers on the A-Forms, not just the OIR as it usually takes us several weeks to receive the OIR, delaying our ability to contact the victim. Obtain emergency contact info whenever possible as well.
 - List all officers that were on scene in your reports.
 - Include as much detail as possible when writing your reports. Detailed reports are helpful to our prosecutions and also provide you as an officer with a more thorough account of the incident to refresh your recollection months or years later when the cases finally go to trial. This helps you provide more accurate testimony in depositions and trials, avoid impeaching yourself or fellow officers on the case; it also limits the defense's ability to undermine the quality of your investigation based on the length or quality of your report.
- **Communication & Scheduling Issues:**
 - If you are e-notified for a pre-file conference or trial and are unavailable, you must call the State Attorney's Office to inform us and reschedule. It is unacceptable, especially upon receipt of a mandatory trial subpoena, to not show up, not call in, and turn your phone off simply because you are on vacation or have an emergency. Have *someone* call in for you. Additionally, officers are not excused from mandatory subpoenas because it is their day off. You must reach out to inform us, so that we know to reschedule you sooner rather than later or to ask for emergency continuances when necessary. We have had many instances where officer schedules in e-notify are inaccurate, so do not just assume that we know that you are unavailable.
- **Injunction Violation Arrests:**
 - We have received several cases recently where the Petitioner (the party who requested and is protected by the injunction) has been arrested for violation of the injunction. These arrests should not be happening because injunction conditions only bind or restrict the actions of the Respondent. Petitioners cannot be lawfully arrested for the violation of an injunction where they are the protected party. Petitioners can be arrested when appropriate for other crimes against the Respondent, such as stalking, battery, harassing calls, trespass, etc., but not for an injunction violation.

Automated A-Forms - Compliance for January 2017 was 98.36% and overall was 95.37%.

Issues from the floor –

- **Public Records Request for Police Reports**
 - Police departments have reported an increase in the number of public records requests for police reports mostly submitted by public defenders. Police agencies **MUST** honor any valid public records requests. They can redact those portions that are exempt or confidential due to any ongoing criminal investigations. They should notify the assigned prosecutor that a request was made, discuss with them exemptions that might apply and provide them copies of what they give to the defense.

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- The obvious reason for such requests is the failure of police officers/detectives to provide all known police reports to the state so that they can be provided in discovery. In some cases, defense attorneys are finding out at depositions that reports were written by other officers not even listed in discovery. Ultimately, we need officers and detectives to give us the names and ID numbers of all officers who took testimony, photographed/collected evidence, wrote reports and manned a body or dash camera that recorded the incident, and to provide reports written by said officers. This would drastically reduce public records requests.
- **Disorderly Conduct:**
 - Issues were raised regarding problems officers encountered with the prosecution of disorderly conduct cases in County Court. We will contact the Chief of County Court to ascertain the specific issues/problems involved in these cases and report back at the next PPCC meeting.

Case Law discussed

Next PPCC meeting – Wednesday, April 19, 2017

Recent Case Law by Criminal Intake ASA Roberto Fiallo

Firearm located in a vehicle was not on or about subject's person or readily accessible to him at the time of his encounter with the police. Brunson v. State, ---So.4th ---, 2017 WL 362578 (Fla. 4th DCA 2017)

The police responded to a residence where it was reported that someone outside was firing shots in the air. The initial officer on the scene was advised by a witness that the defendant was the shooter who had driven away in a particular make and model vehicle, and was possibly going to a certain location. A BOLO was issued describing the defendant, his car, and the location. Another officer hearing the BOLO, responded to the location, where the vehicle and the defendant were found. The officer conducting the stop testified that the defendant was observed getting out of the vehicle and walking away. The officer did not encounter the defendant in the vehicle. The defendant was handcuffed, placed in the rear of the police vehicle and read Miranda. The defendant was asked where his gun was located, and he ultimately said the gun was underneath the front seat, on the hump. The gun was found underneath the front seat. The gun was loaded, would have been within the defendant's reach when seated in the driver's seat, and he did not have a concealed firearm permit. The State charged the defendant with carrying a concealed firearm. At the end of the State's case the defendant moved for judgment of acquittal, arguing that the firearm was not readily accessible to him as he was out and walking away from the vehicle. The trial court denied the motion and the appeal followed.

The appeal court reversed and remanded for entry of a judgment of acquittal. The court held that under the facts of this case, the defendant was already out of the vehicle when approached by law enforcement, and as a matter of law the firearm was not "on or about [the defendant's] person" or "readily accessible" to him, as required by the statute.

In this case, the officer's testimony regarding the defendant's location in relation to the vehicle was vague and did not address the issue of specific distance, whether the car door was open, or other factors and observations which would have addressed the requirements under the statute.

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Search of contents/data on cell phone recovered from a stolen vehicle without a warrant, violated the 4th -Amendment. State v. K.C., 207 So.3d 951, (Fla. 4th DCA 2016)

The police stopped a vehicle for a traffic infraction. After an abrupt stop in a parking lot, the two occupants exited and fled. The investigation by the officer revealed that the vehicle had been reported stolen. The officer observed a cell phone inside the passenger's compartment of the vehicle. The officer further observed that the lock screen of the phone had a picture of an individual that looked similar to the subject who ran from the vehicle after the stop. The phone was "locked" and the officer did not attempt to unlock it. The phone was impounded pursuant to the investigation. Believing the phone to be "abandoned", a forensic detective unlocked the phone and obtained information that the phone belonged to the defendant, and he was charged with burglary of a conveyance. The defendant moved to suppress the search of the phone, arguing that the seizure itself was not illegal, but the search without a warrant violated the 4th Amendment. There was no evidence that the defendant himself left the phone in the stolen car. The State argued that the phone was abandoned, and there was no reasonable expectation of privacy. The lower court granted the defendant's motion to suppress and the State appealed.

The appeal court affirmed the suppression, holding that both the United States Supreme Court and the Florida Supreme Court have recognized the difference between cell phone (qualitative and quantitative) and other objects, and the right to privacy in that information. The abandonment exception does not apply to cell phones "that are password protected". Paraphrasing Chief Justice Roberts, "[o]ur answer to the question of what police must do before searching [an abandoned, password protected] cell phone ... is accordingly simple—get a warrant."

Bright line rule, if you have a password protected cell phone that you impound pursuant to an investigation, get a warrant to search its content. Side note: consent may be appropriate under certain circumstances.

All opinions of the Third District Court of Appeal (3rd 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 3rd 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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