For the Law Enforcement Agencies of Miami-Dade County

The Rap Sheet

Katherine Fernandez Rundle — Miami-Dade State Attorney

1 May 2012

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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 PPCC Meeting
April 18, 2012

Agencies represented: SAO, M-DPD, Miami PD, Miami Beach PD, M-DPD Crime Lab, Hialeah PD, Coral Gables PD, Florida City PD, North Miami Beach PD, Pinecrest PD, Surfside PD

Agenda Items:

SAO Human Trafficking Task Force:

The State Attorney's Office has formed a Human Trafficking Task Force. Assistant State Attorney Susan Leah Dechovitz has been designated the director of the Task Force and spoke to the attendees at the PPCC meeting. Human Trafficking is a form of modern day slavery. In general, its victims are subjected to force, fraud or coercion for the purpose of sexual exploitation or forced labor.

The Task Force is comprised of 7 Assistant State Attorneys (who work on the Task Force in addition to their other job responsibilities) plus victim witness personnel and support personnel. It takes a multi-faceted approach, working with all who have an interest in fighting this crime, including the most important component, law enforcement. The SAO will be conducting trainings in this area in our office for police officers. We will be sending notices for the trainings to each department and publishing them in *The Rap Sheet*. We have instituted a rotating duty where ASAs will be available by cell phone 24/7 to give legal advice, assist with search warrants, etc. The duty roster for the Task Force will be distributed with the other duty rosters, such as the Homicide Duty Roster. We will also be setting up meetings with whomever is designated within each law enforcement agency to discuss how we can work together in furthering the goals of the Task Force.

SAO Community Prosecution Unit:

Assistant State Attorney Sherria Williams is in the State Attorney's Office Community Prosecution Unit. She spoke with those in attendance about the availability of the staff in this Unit to assist law enforcement. The Unit focuses on crime prevention, criminal education and community involvement. CPU looks to continue broadening its partnerships with police agencies, community and business organizations. Staff in the CPU is available to attend community meetings and make presentations to address issues and concerns. You may contact the Community Prosecution Unit at 305-547-0724 or Sherria Williams directly at 305-775-8075.

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IMPORTANT!

Next PPCC meeting, **May 16, 2012, 1:00 p.m.**
State Attorney's Office • 1350 NW 12 Avenue • Miami FL 33136
All are invited to attend

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Issues from the Floor:

Procedures for Subpoena Requests:

An officer raised the issue that when police are requesting subpoenas from different areas of the State Attorney's Office that assist law enforcement officers with them (eg., Criminal Intake, Investigations, Economic Crime Unit) the procedures are all different. Some request emails with attachments, some faxes, some phone calls or live appearances, and the officers asked if these procedures could be made uniform. This is being explored and the results will be addressed at a future PPCC meeting and The Rap Sheet subsequent to that meeting.

The next PPCC meeting will be held on May 16, 2012 at 1:00 p.m.

Recent Case Law

May v. State, 37 Fla. Law Weekly D122b (1/11/12, 4th DCA) This defendant entered a no contest plea to 2 counts of withholding information regarding previous prescriptions from a practitioner (a/k/a **doctor shopping)** and reserved her right to appeal the trial court's denial of her motion to suppress the stop in this case, alleging insufficient **reasonable suspicion.**

The circumstances of the stop were as follows: A Hollywood PD detective (with 3 years experience in investigating "pharmaceutical crimes") was working with a DEA unit surveilling the parking lot of a pain clinic. She observed the defendant and another person come out of the pain clinic and get into a car driven by a third person. When the car pulled out, the detective followed. When the detective pulled alongside of the vehicle she observed an amber prescription bottle being passed from the front to the back seat where the defendant was seated. A detective communicated with a uniform officer who stopped the vehicle for a brake light violation. The State stipulated at the hearing on the motion to suppress that the stop for the brake light violation was not valid (this due to the fact that even though the middle brake light was not functioning, the other 2 brake lights were). The sole issue to be decided, then, was whether the detective's observations, interpreted in light of her knowledge and experience, formed sufficient reasonable suspicion to justify the stop.

The detective testified at the suppression hearing that her experience has shown that a lot of narcotics violations by hand-to-hand transactions, or "sharing of pills", typically occur in the parking lots of pain clinics. In that most pain clinics are a cash-only operation, it is common to observe people "divvying up the proceeds" of one person's visit to the doctor among themselves, or to give the driver a portion as payment for driving the patient to the clinic. The fact that the pill bottle was being passed around was suspicious. People don't share their legitimately-obtained prescriptions. The trial court found the detective's testimony credible and then concluded that in determining whether an officer has reasonable suspicion, deference should be given to an officer's perspective, training and experience. What may appear to be innocent conduct to the average citizen may reasonably appear suspicious to a trained and experienced officer.

Glenn v. State, 37 Fla. Law Weekly D25la (1/27/12, 5th DCA) This defendant was convicted of, among other things, aggravated battery and resisting an officer with violence. At trial the defendant had requested a **jury instruction** be given on the **justifiable use of non-deadly force.** The trial court denied that request and the conviction on these two counts were reversed because of it.

Part of the requested instruction reads: "A person is not justified in using force to resist an arrest by a law enforcement officer who is known to be or reasonably appears to be a law enforcement officer. However, if an officer uses excessive force to make an arrest, then a person is justified in the use of reasonable force to defend himself...but only to the extent he reasonably believes such force is necessary."

The testimony of the officer and of the defendant regarding the facts surrounding their interaction differed markedly. The officer testified that due to defendant's resistance, he struck him several times with his baton and that the 5th time he struck him, the defendant punched the officer in the face, grabbed the baton and hit the officer with it. The defendant testified that the officer struck him in his stomach with the baton twice, at which point the defendant hit the officer in the face, grabbed his baton and threw it away. The appellate court held that the defendant's version of the incident was sufficient to support the giving of the instruction. Where the evidence in inconclusive or conflicting, the failure of the trial judge to provide a charge which lays down the standards for the jury to follow under varying permissible views of the evidence constitutes reversible error.

H.W. v. State, 37 Fla. Law Weekly D296b (2/1/12, 3d DCA) The juvenile was adjudicated guilty on a charge of **assault** on a specified school official. To prove an assault, three elements must be shown beyond a reasonable doubt:

1.) There must be an intentional, unlawful threat,
2.) An apparent ability to carry out the threat, and
3.) The creation of a well-founded fear that the violence is imminent,

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This juvenile was called into the principal's office for disciplinary action. He became verbally abusive to the principal, cursed at her, and paced back and forth in front of her desk. He left but returned to her office within the hour. At that time the principal was seated behind her desk speaking to another teacher. A school resource officer was standing right outside of the principal's office. He cursed at her again, told her-she was "foul" and that "something bad was going to happen to her that day". The teacher who was in the office testified as to these remarks, but also testified that she didn't believe the principal was afraid, but "disturbed". She did not believe that the juvenile could strike the principal, as he would have had to jump across her desk to do so. The officer, hearing the commotion, came into the office and took the juvenile out.

The court held that there was no evidence in this case to show that H.W. did any act to create a well-founded fear by the principal that violence was *imminent*. The mere intention to commit an assault is not enough; there must be some overt act sufficient to demonstrate a threat directed at the person placed in fear. While the state had proven that there was a threat, and even that the victim had a well-founded fear, his words did not create a well-founded fear that he would do something to the victim *at that time*. The case was reversed.

Perez v. State, 37 Fla. Law Weekly D291a (2/1/12, 3d DCA) The defendant was convicted of possession of cocaine. He was stopped by a trooper for a broken tail light and problems with his vehicle's registration. The trooper asked for, and the defendant gave, consent to search his vehicle. The trooper and a dog searched the truck and the dog eventually discovered a box, hidden within the truck, which contained cocaine. The trooper was part of the contraband interdiction unit and was patrolling the area as part of an ongoing narcotics investigation with a DEA agent. The investigation included, pursuant to a tip received, surveillance of the defendant.

Before the trial, the defendant's attorney filed a **motion *in limine*** to exclude reference at trial to the ongoing investigation because none of the witnesses with knowledge of the investigation were made available for trial. Further, the defense contended that any testimony regarding the investigation would be hearsay, and that the evidence was more prejudicial than probative. The defense's theory of the case was that the defendant had no knowledge of the presence of the cocaine hidden within the truck.

The court permitted testimony about the ongoing investigation and allowed the prosecution, in closing argument, to state that the trooper "was following the defendant pursuant to a narcotics investigation". The Third DCA held that the evidence was inadmissible and ruled that it could not conclude, beyond a reasonable doubt, that the testimony and prosecutorial comments regarding the ongoing investigation did not influence the jury to convict the defendant. The case was reversed and remanded.

Ferrer v. State, 37 Fla. Law Weekly D319a (2/3/12, 2d DCA) Police suspected that the defendant was growing marijuana in his two-story home. The home was surrounded by a fence and entrance to the driveway was blocked by an electric gate. Officers were conducting their surveillance from an empty lot next door and from the street. At one point, the defendant came to the gate to retrieve some trash cans from the street. Police approached him at the gate, advised him that they suspected criminal activity was going on at the house and asked him to let them come inside the gate to speak with him about it. Ferrer opened the gate with a remote control. When officers asked him for ID, they followed him down the driveway while he got ID out of his car. While an officer went with Ferrer to get his ID, two other officers went to the back of the house and up the stairs to the second story porch where they smelled marijuana. Based on this, Ferrer was detained while police went to obtain a search warrant. A search of the house revealed a trafficking amount of marijuana.

This appeal deals with the legal **scope of the defendant's consent.** The trial court denied the defendant's motion to suppress the search and the appellate court reversed this ruling and ordered the defendant be discharged. The court's ruling cited to prior case law holding that the scope of a search is generally defined by its expressed object. Police asked Ferrer if they could speak with him on the other side of the gate and he agreed to that request. It is not reasonable from this for the officers to conclude that this consent to entry authorized them to roam freely about the property. The state argued that the search should be upheld based on the "plain smell" doctrine. The court held that the "plain smell" doctrine did not apply because the officers were not in a location where they had a legal right to be when they detected the odor.

State v. Venegas, 37 Fla. Law Weekly D441a (2/17/12, 2d DCA) After a stabbing at the Collier County courthouse, police determined that the defendant was involved in the incident. He agreed to go to the station with police for questioning. When asked if he wanted to talk to them without a lawyer, the defendant said “No, because there is someone dead”. When asked the name of his lawyer, the defendant said he wanted to talk with his wife (who had accompanied him to the station), that he’d never had a lawyer before. At this point the detective asked the defendant for consent to give them the knife or he’d have to get a warrant to search his home and vehicle. The defendant then told him where the knife was. Not surprisingly, the court concluded that the defendant had, in fact, unequivocally **requested an attorney** and that the knife the police found (where the defendant said it was) and seized should also be suppressed as “**fruit of the poisonous tree**”.

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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