FOR THE LAW ENFORCEMENT AGENCIES OF MIAMI-DADE COUNTY

The Rap Sheet

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May 2014

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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, 2014

Agenda Items:

Agencies represented: Agencies represented: SAO, Miami-Dade PD, City of Miami PD, Coral Gables PD, Miami Beach PD, Miami Springs PD, Aventura PD, Sunny Isles Beach PD, Florida State Fire Marshal's Office and University of Miami PD.

Motorized Bicycles

We continued our discussion regarding what constitutes a motor vehicle. A motor vehicle is a self-propelled machine, **powered exclusively by a motor**. Any vehicle that is propelled by a combination of both a **motor and pedals (human power) and cannot exceed 20 miles per hour is not a self-propelled vehicle and therefore is not a motor vehicle.**

Referring Victims to the SAO

We often see victims who are frustrated when they come to our office. That frustration is exacerbated when they are referred to our office by their local police departments to file a felony complaint. A victim cannot file a felony complaint with us. Felony charges must be investigated by a law enforcement agency and brought to this office for prosecution by the investigating officer, if and when appropriate.

Victims of misdemeanor cases where an arrest has not been made can be referred to our office to file a misdemeanor complaint.

Retail Theft Involving Multiple Defendants

In order to charge multiple defendants as co-defendants in a retail theft case, there must be an objective showing that they were acting together to execute the theft. If each defendant selects his/her merchandise and places said merchandise in his/her own bag and does nothing to assist a co-defendant, then each defendant must be charged separately. On the other hand, if they are passing merchandise to each other or one is attempting to block the view of security cameras from the action of another person who is stealing, they can be charged as co-defendants.

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IMPORTANT!

Next PPCC meeting, **Wednesday, May 21, 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

Case Screening Supervisor Yvonne O'Cana reiterated her concerns about the continued increase in the number of officers not calling to schedule pre-filing conferences, thereby creating undue delay in the time needed to screen and determine the disposition of cases. She provided stats to representatives of the agencies involved.

It bears repeating that this issue could be easily identified and remedied if police departments would consistently review the relevant E-Notify reports and take the necessary disciplinary actions.

Automated A-Forms

MDPD training is on-going. The City of Miami was scheduled to begin training in April. Training for Group Three that involves 13 additional police agencies is scheduled to begin at the end of April.

Case Law discussed - State v. Bainter, (5th DCA) 39 FLW D677a and Hampton v. State (5th DCA) 39FLW D556b

Next PPCC Meeting – May 21st, 2014, at 2:00 p.m.

Recent Case Law

Compiled by Joe Robinson, Chief of the Felony Screening Unit

Navorette v. California, 572 U.S. (2014)

A traffic stop of the defendant was precipitated by what was treated as an anonymous call to 911 by another driver, who complained that a particular pickup truck had run the caller off of the highway. The caller described the truck by color, make, model and license plate. Less than 15 minutes later, a highway patrolman spotted a truck matching this description on the same highway, passed it, made a U-turn and pulled the truck over within 5 minutes. As the patrolman and another officer approached the truck, they smelled marijuana emitting from the truck. A probable cause search of the truck resulted in the discovery of 30 pounds of marijuana.

The defendant moved to suppress the evidence, arguing that the traffic stop violated the Fourth Amendment because the officer lacked reasonable suspicion of criminal activity needed to legally detain the defendant. The lower courts, and ultimately the United States Supreme Court upheld the stop.

The Supreme Court held, in a 5-4 decision, that the information provided by the anonymous caller was sufficiently detailed so as to "demonstrate sufficient indicia of reliability to provide reasonable suspicion to make [an] investigatory stop," explaining that *"By reporting that she had been run off the road by a specific vehicle—a silver Ford F-150 pickup, license plate 8D94925—the caller necessarily claimed eyewitness knowledge of the alleged dangerous driving. That basis of knowledge lends significant support to the tip's reliability."*

The five-justice majority placed great emphasis on the fact that the anonymous caller reported personally seeing the criminal conduct complained of, as opposed to an example where an anonymous caller reports that a well-described individual is at a bus stop armed with a firearm, but does not relate that the caller actually saw the firearm. Thus, the *"claimed eyewitness knowledge of the alleged dangerous driving ... lends significant support to the tip's reliability."*

The Court also added that the contemporaneous nature of the report, and the fact that 911 calls can be traced, added to the reliability of the call.

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Preston V. Gee (2nd DCA) 39 FLW D564

This case concerns pretrial detention, particularly holding a defendant without bond.

The defendant Preston was arrested for armed robbery. At his first appearance hearing, the judge ordered him held without bond pending trial, purely from a reading of the arrest form. The court ordered Preston held despite defense counsel's objections that the State had not moved for pretrial detention or presented witnesses in support of it and that the arrest form was an insufficient basis for ordering it. The defendant filed for a writ of habeas corpus, listing the Sherriff (Gee) as the respondent.

After a full review of the Florida Constitution (Article I, Section 14), Florida Statutes (Sections 907.041 and 903.046), and the Florida Rules of Criminal Procedure (3.131 and 3.132), the Second District Court of Appeal held that if the State wishes to have a defendant held pretrial without bond, it needs (1) to show at an Arthur hearing that the proof of the accused's guilt is evident or the presumption that he or she committed the crime is great, or (2) file a motion for pretrial detention.

The court held that, under an Arthur hearing, an arrest form can be sufficient for the factual finding needed to hold a defendant without bail, if the arrest form contains sufficient factual detail for the court to make the requisite findings. In this case, the arresting document (called a "CRA") was not:

"The CRA in Preston's case fell well shy of the *Russell* standard in terms both of the quantum of its proof and of the competence of its proof. It was signed by a Tampa police officer, who swore that the statements contained in the report were true "to the best of [his] knowledge." It did not contain the names of the victims or of any other witnesses, nor did it recite any statements attributed to them. The "Tangible Evidence" section of the CRA did indicate the existence of sworn statements recovered by "AFFIANTS" and that their present location was "EVIDENCE." But the affidavit did not indicate who made the sworn statements, to whom the statements were made, or what was contained in them. No written statements of any kind were attached.

The facts recited in the CRA generally alleged that Preston robbed the victims while in a vehicle of a specific description and bearing a specified license plate number.[FN6] It did not indicate whether the license number was observed by witnesses to the crime when it was committed or was obtained by the officer (or someone else) thereafter. The affidavit did not state whether Preston's supposed presence in the vehicle or at the scene of the crime was confirmed by eyewitnesses or whether he was simply alleged to have been present on the basis of some connection to the vehicle, which also was not specified in the affidavit. The CRA stated that Preston was taken into custody, but it did not indicate the circumstances of his arrest or whether he was with the vehicle at the time. These omissions in turn undermined the weight of the one alleged piece of evidence that circumstantially tied the vehicle to the crime, that being the discovery by the "affiants" of the victims' belongings inside it.

Manifestly, the facts alleged to have constituted the charged crimes were vague, conclusory, and outside the personal knowledge of the officer who signed the CRA. The other facts alleged, relating to Preston's arrest and the discovery of the victims' property inside the vehicle may or may not have been within the officer's personal knowledge.[FN7] But even assuming that the officer himself discovered the items in the vehicle and assuming further that the vehicle was in some way connected to Preston, these circumstances did not meet the quantum of proof necessary to deny Preston's pretrial release. …

All in all, the CRA in this case contained little more than a recitation of broad, conclusory allegations by persons unnamed. As such, it was insufficient and incompetent to support a finding that the proof of Preston's guilt was evident or the presumption great."

This case indicates the importance in writing detailed arrest forms, setting out the narrative facts, witnesses, and circumstances, so that anyone reading it could judge the strength of the case against the defendant.

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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