For the Law Enforcement Agencies of Miami-Dade County

The Rap Sheet

Katherine Fernandez Rundle — Miami-Dade State Attorney

1 November 2012

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Members of the Crimes Against Law Enforcement Officers Subcommittee are listed on the back page

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The phone number to call at the SAO to
schedule a PFC on a probable cause arrest is

305-547-0200

This number is staffed 24 hours a day,
7 days a week
Any other number may not be answered or transferred

Summary of PPCC Meeting
October 17, 2012

Agencies represented: SAO, M-DPD, Miami PD, Miami Beach PD, Sunny Isles Beach PD, M-DPD-FSB, North Miami Beach PD, Pinecrest PD, Miami Springs PD, Surfside PD, Aventura PD

Agenda Items:

Presentation by M-DPD Digital Forensics Lab:

Detective Tracy Tompkins, of the M-DPD Digital Forensics Lab, gave a very interesting power point presentation on computer and cell phone forensics. Cell phones and computers often contain a wealth of evidence in criminal cases. Photographs, emails, text messages and call logs can strengthen your case and may create new investigative leads. At the meeting, M-DPD announced that they will provide forensics examinations for all law enforcement agencies in Miami-Dade. The forensic examiners can extract data from cell phones including text messages, pictures, call logs and "metadata" such as GPS coordinates of pictures taken by smart phones. They have on-call examiners that can respond in the case of emergencies. M-DPD Digital Forensics requests that officers follow a few simple guidelines to maximize the evidence that can be recovered from cell phones. If possible obtain and write down any unlock passwords, key codes or diagrams. Also if possible, obtain any charging and data cables for the phone. Most importantly turn the phone off or put it in airplane mode as soon as possible after obtaining it as modern smart phones can be remotely wiped if it continues to access the cellular network. If you wish to have M-DPD Digital Forensics assist in gathering your electronic evidence, please contact them at (305) 471-2555. They have created a Consent Form specific to the area of digital forensics. You may request one by emailing fcls@mdpd.com and requesting it; they will respond to your email with the DFS Consent Form in PDF format.

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IMPORTANT!

Next PPCC meeting, **November 21, 2012 at 1:00 p.m.**
State Attorney's Office • 1350 NW 12 Avenue • Miami FL 33136
All are invited to attend

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Pawnshop Detectives:

I passed around a list as I'm trying to gather the names of those detectives who currently deal with monitoring pawn shop activity. I was given the names of 4 M-DPD detectives (Kendall and Northwest Districts) and one Miami Beach PD detective. If you are involved with the pawnshop detail at your agency, please provide your name and contact information to me.

Issues from the Floor:

eNotices:

City of Miami PD raised the issue of eNotices they have received that are not limited to court appearances. They provided 3 examples. It was brought up that since eNotify is the only system we have available for notification of officers and detectives, that it may be being utilized on more serious cases for requests for investigative follow-up. Yvonne O'Cana, of the SAO Case Screening Unit, offered to receive such eNotices and she will follow up to determine the nature of the case involved.

Case Filing Decisions:

Although Lt. Sanchez's (M-DPD) inquiry was in regard to "master" cases, the discussion that followed applies to any type of case. When officers are giving sworn testimony, providing police paperwork and discussing case filing decisions with an ASA or paralegal, if the officers do not understand the decision made, or perhaps have a different interpretation of the law that governs the filing decision, they should always ask. Ask the ASA to explain the legal issues, discuss the decision with their supervisor (usually a division chief) or maybe the officer would want to speak with the division chief directly.

The next PPCC meeting will be held on November 21, 2012 at 1:00 p.m.

Recent Case Law

Bethel v. State, 37 Fla. Law Weekly D1596b (4th DCA, 7/5/12) Officers on patrol observed a traffic violation and followed the vehicle, which stopped suddenly in front of a house with a fenced-in yard. The defendant was a passenger in the vehicle, and when he exited the car the officer saw about 4 inches of the butt of a handgun sticking out of his pants pocket. As the officer yelled to his partner that the defendant had a gun, the defendant had walked into the fenced-in area and was going toward the front door. The officer drew his gun, ran into the fenced-in yard and ordered the defendant to put his hands up. When the defendant complied, the officer seized the gun and arrested the defendant. Turns out the defendant was a convicted felon and he was charged accordingly.

The defense argued two points at the motion to suppress. First, that the officer did not have **probable cause** that the defendant committed a crime and second, that the officer could not enter the fenced-in area of the yard (it was later learned that it was the defendant's house) and **arrest** him **without a warrant**. The state countered that the officer had probable cause that the defendant was committing the crime of open carrying of a firearm, and that the officer could enter the curtilage of the defendant's house because the officer was in fresh pursuit of the defendant.

During the hearing on the suppression motion the officer testified that no, he did not know if the defendant had a concealed weapons permit, that the defendant did not reach for the gun, and that some pellet and BB guns look very similar to firearms until close inspection. He also testified that he did not first ask the defendant about the weapon but proceeded to seize it immediately out of concern for his and his partner's safety.

The appellate court upheld the trial court's decision not to suppress the evidence. It found that based upon the officer's testimony that he immediately recognized the object the defendant had in his pocket as a firearm, that there was probable cause to arrest the defendant for open carrying, despite the fact that the rest of the firearm was concealed from view. What the court called the "theoretical possibility" that the firearm may have turned out, on closer inspection, to be a pellet or BB gun did not defeat a finding of probable cause.

The court further held that the entry into the curtilage to arrest the defendant without a warrant was permissible because

1.) The officer saw the gun from a place he had a lawful right to be (outside of the fenced-in area),

2.) The incriminating nature of the gun was immediately apparent to the officer based his experience of having seen thousands of handguns, and

3.) The officer had lawful access to the gun because exigent circumstances existed, that is, the need to seize the gun to protect the officers' safety.

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In addition, the court cited to Florida statute 901.15(1) which states that an officer may make an arrest when the offense is committed in the officer's presence and the arrest is made immediately or in fresh pursuit.

Crist v. State, 37 Fla. Law Weekly D1625a (2d DCA, 7/6/12) The defendant was stopped and cited for riding his bicycle at night without a light. After the officer issued the citation, he asked the defendant for **consent for a search**. The officer testified that the defendant agreed to the search and that the officer waited for backup to arrive before conducting the search. He found a vial containing cocaine in one of the defendant's pockets. The defendant testified that he did not consent to be searched but only to a patdown for weapons and that the search didn't occur until after he had been handcuffed. The officer testified that the basis for the stop had concluded once the citation had been issued and that the defendant was free to leave at that time. The officer acknowledged that he had never advised the defendant that he was free to leave.

The court held that, even taking all the facts in the light most favorable to the state, it was uncertain whether the defendant voluntarily gave his consent because it was not clear that he knew he was free to leave at the time he agreed to the search or while he waited for the backup officers to arrive. Because the officer never advised the defendant that he was free to leave, the burden for showing that the consent was freely and voluntarily given shifted to the state. The court found that the state did not meet that burden. Even if the court assumes that the consent was freely given after the stop by the patrol car and the issuance of the citation, the fact that the officer waited for a second patrol car to arrive before conducting the search is "the antithesis of a clear and convincing indication that a reasonable person would feel free to revoke consent and leave during that delayed waiting period". The trial court's decision was reversed.

Singleton v. State, 37 Fla. Law Weekly D1657c (2d DCA, 7/11/12) This case illustrates that in certain factual scenarios, **DNA evidence** will not be sufficient proof of the underlying crime. After a homeowner had left for work, his nephew came into the house and immediately noticed that some items were missing. He heard a noise, left the house and called the police from outside. While outside, he saw the defendant in the yard next door with a dog. He had seen the defendant before, on previous visits to his uncle's house. When police arrived they found no one in the victim's house. The house next to the victim's was a duplex. There was a box truck in the driveway for the half of the duplex closest to the victim, but there were signs on the windows indicating that an eviction or foreclosure was in process. No one answered when police knocked on the door of the other half of the duplex, which appeared to be occupied.

Upon further investigation of the truck, a tobacco odor seemed to be coming from inside it. Police rolled up the back cargo door and found a burning cigar resting on the rear edge of the cargo deck. It had not been fully visible when the door was closed. The burglary victim's stolen property was also in the truck. Police located the renter of the truck (Clark), who indicated that the previous day he had been helping a friend move from one of the duplexes, that he was assisted by the friend's son and the defendant. They had partially loaded the truck with his friend's possessions, he said, and they were going to return to finish the loading that day. Clark said that they had not locked the rolling door of the truck. He added that the defendant had been smoking that type of cigar the day before. The defendant arrived on the scene later and indicated that he had, in fact, been at the duplex the evening before. When pressed, he also said he had been at the duplex that morning "to deal with his dog". The defendant had been staying at the duplex and still had his dog there. The defendant's DNA was found on the cigar. There was a fingerprint found on one of the victim's items in the truck, but it was not the defendant's. There were no fingerprints recovered from inside the victim's house. The defendant was charged with burglary and theft.

The court held that the case was based wholly on circumstantial evidence, and therefore the evidence must be sufficient to establish each element of the offenses and must also exclude any reasonable hypothesis of innocence. "When a circumstantial evidence case fails to exclude the defendant's reasonable hypothesis of innocence, the defendant must be acquitted 'no matter how strongly the evidence may suggest guilt'." The state argued that the defendant's DNA on the cigar was direct evidence, but the court held that the defendant's DNA on the cigar was not evidence of the defendant's participation in the burglary or theft, it was merely direct evidence of a circumstance that suggested his participation. Further, the court stated that the State was mistaken in its reliance on the statutory presumption that, in the absence of a reasonable explanation, one in possession of recently stolen property knew or should have know that the property was stolen. Simply put, the defendant was not in possession of the stolen property, actually or constructively. The court held that the state's evidence established the defendant's presence at the place where the victim's property was stored after it was stolen, which was not legally sufficient to prove that he committed the burglary or the theft. This case reminds us that the presence of a defendant's DNA outside the scene of a crime, or on a small, moveable object, may not be conclusive evidence of their participation in the crime.

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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