

The Rap Sheet

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Enforcement Officers
Subcommittee are listed
on the back page**

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Summary of PPCC Meeting June 17th, 2015

Agencies represented: SAO, Miami-Dade PD, Miami PD, Miami Beach PD, Pinecrest PD, Key Biscayne PD, Sunny Isles Beach PD, Opa Locka PD, Hialeah PD and Miami Gardens PD

Agenda Items

Credit Card Fraud/Id Theft Cases

FSU sent another reminder about the absolute necessity of providing name and contact information of victims and banks on credit card fraud and identity theft cases. Officers must bring copies of transactions and copy of cards to the Pre-Filing Conference. For check cases, remember to obtain accountholder information and bring copies of checks to the conference. Failure to provide such information will result in cases being no-actioned.

Charges/Automated A-Forms

Now that most arrest affidavits are being transmitted electronically, we are seeing a higher number of cases coming in with the wrong charge. Trainers must emphasize that officers are to verify that charges listed on their A-Form are correct before the transmission.

Civil Citations

In response to an inquiry regarding civil citations issued to juveniles, several departments advise that generally, juveniles who are issued civil citations are taken to the Juvenile Assessment Center for processing.

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IMPORTANT!

Next PPCC meeting, **Wednesday, October 21, 2015.**
State Attorney's Office • 1350 NW 12 Avenue • Miami FL 33136
All are invited to attend

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Legislative Update Discussed

Case Law Discussed

Next PPCC meeting – Wednesday, November 18, 2015

Recent Case Law

Compiled by Felony Screening Unit Chief Joe Robinson

Williams v. State, So.3d (Fifth Dist. 2015)

The defendant in this case challenged the denial of his motion to dismiss after being convicted of refusal to submit to a breath test, under Florida Statutes 316.1939. The Fifth District Court of Appeal denied the defendant's claim that it is unconstitutional to punish a person criminally for refusing to submit to a warrantless breath –alcohol test.

The court agreed with the defendant's claim that if he had a Fourth Amendment right to refuse a breath test, criminalizing the assertion of that right would be unconstitutional. The court went to examine the various rationales for upholding the legality of alcohol-breath tests. The court rejected the implied-consent statute, noting that while it was valid for the civil penalties of driver's license suspensions, it did not suffice as consent for Fourth Amendment purposes as a per se exception to the warrant requirement. The court also rejected a search incident to arrest rationale, finding it inapplicable to these situations.

Ultimately, the court found the statute lawful under the Fourth Amendment using the balancing test of reasonableness – weighing the promotion of legitimate government interests against the degree to which the search would intrude upon the individual's privacy. The State has a legitimate interest in decreasing and prosecuting drunk driving and the breath test is minimally intrusive with a minimum of inconvenience and embarrassment.

Bussey v. State, (2nd Dist.) F.L.W.

The defendant was convicted of first degree murder for the shooting of a convenience store worker during a robbery. The defendant appealed his conviction, claiming his post-Miranda confession to detectives should have been suppressed. The Second District Court of Appeals overturned the conviction, holding the trial court erred in not suppressing the confession.

In questioning the defendant, the detectives repeatedly referred to the death penalty, pressuring the defendant to tell them if the shooting was a mistake or an accident so he would not then face the death penalty. *"Based on the number of times the detectives referred to the death penalty, both explicitly and implicitly, we cannot conclude that the detectives were merely informing Bussey of the penalties he faced for the possible charges in this case. ... The purpose of the detectives' comments regarding the death penalty and saving Bussey's life was not to inform him of the penalties he faced. ... Rather, the purpose of the comments was to instill fear in Bussey that he would face the death penalty with the hope that his fear would cause him to confess to the robbery and murder."*

The court continued: "The detectives misled Bussey into believing that if he confessed to the victim's death being an accident, he would be charged with robbery, not murder, and he would not face the death penalty. ... And even after he admitted to the robbery, Bussey was still under the impression that he would not be charged with murder, as indicated by his comments at the end of the interview."

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... Based on the totality of the circumstances, we conclude that Bussey's statements were the result of coercion. During almost the entire interview, Bussey adamantly denied his involvement in the robbery/murder, despite the detectives telling him that his fingerprints were found on the counter and despite the detectives showing him the surveillance footage. Bussey finally confessed after the detectives repeatedly referred to the death penalty and misrepresented that he would be charged with robbery, rather than murder, if he confessed. In light of the clear causal nexus between the detectives' conduct and Bussey's confession, we must conclude that his confession was involuntary and therefore inadmissible."

Knight v. State, (1st Dist.) F.L.W.

The defendant was convicted of several charges involving the trafficking and possession of controlled substances. He appealed on the basis that the State failed to prove the elements of constructive possession, specifically that the State failed to prove he exercised dominion and control over the drugs.

The elements of constructive (as opposed to actual) possession are "(W)here the accused does not have physical possession of the contraband but knows of its presence on or about the premises, and can maintain dominion and control over it. ... Proof of guilt based on constructive possession requires the State to prove (1) the defendant had dominion and control over the contraband, (2) he had knowledge the contraband was within his presence, and (3) he had knowledge of the illicit nature of the contraband. ... When the contraband is found in a place the defendant has joint, as opposed to exclusive, possession of, the State can prove constructive possession with circumstantial evidence from which a jury might properly infer that the defendant knew the contraband was present."

Here, the court denied the defendant's appeal, setting the following facts as sufficient evidence of the defendant's knowledge: "(T)he State presented evidence of cocaine, crack cocaine, marijuana, Hydrocodone pills, Oxycodone pills and a host of items used in distributing and selling illicit drugs, all found in close proximity to, or in the same containers with, personal items of Appellant's. Notably, the shoe box, found in the closet of the bedroom Appellant frequently slept in, which contained the pills and baggies with cocaine and crack cocaine in them also contained ATM receipts from Appellant's bank account. In the same closet was the trash bag with heat-sealed plastic bags of the type used in drug sales which also contained Appellant's airplane boarding pass bearing dates that appeared to coincide with the date of a car rental agreement found in the entertainment center in the bedroom. And importantly, Appellant's fingerprint was found on one of the baggies containing cocaine that investigators found in the shoe box."

State v. Smith, F.L.W. (1st Dist.)

In this case, the First District Court of Appeal considered the warrantless search under the hood of the defendant's parked truck. As in most any search and seizure case, the specific facts are most relevant:

"Four days after arresting someone -- not Smith -- at Smith's residence for manufacturing methamphetamine, a Dixie County Sheriff's Office investigator, Lt. Michael Brannin, returned to the home to conduct a follow-up investigation. As he approached the front door, he observed a controlled fire burning on the side of the house. He knocked on the door and, when Smith answered, explained why he was there and said he needed to talk to Smith. Smith stepped out the door and accompanied Lt. Brannin into the yard toward the fire. Their path took them past a truck parked in a carport attached to the house. Investigator Brannon asked to see what was in the fire, and Smith went with him, though saying nothing. The only notable item in the fire was an empty lighter fluid container.

All the while, Lt. Brannon could smell lighter fluid in the vicinity. From training and experience, he knew the odor of lighter fluid is associated with methamphetamine manufacture. He eventually determined the odor was coming not from the fire, but from the truck parked about ten feet away. So, he took a nearby lawn chair, positioned it roughly two feet away from the truck and sat down. At about the same time, he summoned a colleague, Officer Jaime King, who was on standby offsite. Smith, meanwhile, pulled up another lawn chair and sat with Investigator Brannin. The two men conversed; Lt. Brannin asked Smith what he was burning in the fire, and Smith responded that it was yard debris.

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The investigator turned his attention to the truck and asked Smith about a small light attached to the grille. Smith became visibly nervous. Lt. Brannin then pretended to be interested in buying the truck and asked Smith if he could look under the hood. Smith agreed, and opened the hood himself, which allowed Lt. Brannin to see that a bottle appearing to be a Gatorade bottle was inside the engine compartment, located near the radiator, toward the driver's side of the truck. He could not see the whole bottle or its contents, and Smith shifted position to keep the bottle obscured.

Officer King arrived at that point, and Smith announced he had to leave to pick up his children from school. Knowing from training and experience that plastic bottles like the one in the truck's engine compartment are commonly used in the making of methamphetamine, Lt. Brannin asked Smith to hand him the bottle before leaving. Smith obliged, placing the bottle on the ground in front of the truck at the investigator's direction and walking away. Lt. Brannin then seized the bottle, opened it, discovered it contained ingredients for making methamphetamine, and arrested Smith."

While the 1st DCA found the defendant's consent was turned into acquiescence or submission to apparent police authority when the second police officer arrived on the scene, the court found the circumstances provided probable cause that the bottle contained substances used in the manufacture of methamphetamine. The court further held that exigent circumstances permitted a warrantless search where the officer reasonably believed evidence would be destroyed or an explosion would occur if the bottle was not seized.

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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