FOR THE LAW ENFORCEMENT AGENCIES OF MIAMI-DADE COUNTY

The Rap Sheet

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

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The SAO Family wishes you and your family a Joyous Holiday Season and a Happy New Year!!!!

Summary of PPCC Meeting

November 16th, 2016

Agencies represented: SAO, Miami-Dade PD, City of Miami PD, Miami Beach PD, Pinecrest, Coral Gables PD, Homestead PD; Surfside PD.

Agenda Items:

Traffic Citations - We are happy to report that a review of numerous arrest affidavits revealed officers are writing citations for felony traffic violations. The challenge now is to ensure that the citations are being forwarded to the SAO. Officers are being requested to bring to their felony pre-filing conferences copies of all traffic citations issued with a felony case. Also, if the felony case has an accompanying misdemeanor DUI, bring a copy of the DUI packet as well.

Body Cameras- MDPD Officers need to affirmatively note on their arrest affidavits that body camera footage is available. This will enable us to order such footage from our Photo/Video Request Unit early enough so that we can have it before the case is filed.

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IMPORTANT!

Next PPCC meeting - **January 18th, 2017 at 2:00 p.m.**
State Attorney's Office • 1350 NW 12 Avenue • Miami FL 33136
All are invited to attend

Statements from Victims or Witnesses who live in a foreign country – Our Legal Unit has advised us that speaking, interviewing, skyping or otherwise communicating with victims or witnesses who are outside the country is considered "the practice of law" and requires advance notification and authorization from the Department of Justice. On occasion, this process may be lengthy and as a result, officers are being asked, whenever possible, to obtain sworn statements from victims and witnesses who live outside of the United States. Be reminded that these statements should include the factual basis for the case containing the elements that would support the arrest charges and not the witness or victim's conclusions.

Value of Retail Merchandise – We are finding that in retail theft cases, some stores are providing the full price of stolen retail merchandise instead of the discounted price in effect on the date of the theft. In addition, some loss prevention officers have been reporting stolen items twice in their store report to double the value of damaged items because as they have told us, "their store's policy is to double the value of any merchandise that is damaged while being stolen". The correct value of any retail merchandise is the price any customer would pay for said item on the day of the theft. Consequently, officers need to verify the value of stolen merchandise by looking at the tags of stolen items to ensure that the receipt tape given by loss prevention officers reflects the actual value of merchandise on the date of theft.

Case Law Discussed

Next PPCC meeting – Wednesday, January 18th, 2017

Recent Case Law

Compiled by Joe Robinson, Chief of the Felony Screening Unit

State v. Taylor, 41 FLW D2382b (5th District)

This case reminds us that in knock and announce cases involving § 901.19(1), Florida Statutes, that even if probable cause exists for the arrest of a person, the statute is violated by an unannounced intrusion in the form of a breaking and entering of any building, including a private home, except (1) where the person within already knows of the officer's authority and purpose; (2) where the officers are justified in the belief that the persons within are in imminent peril of bodily harm; (3) if the officer's peril would have been increased had he demanded entrance and stated the purpose, or (4) where those within made aware of the presence of someone outside are then engaged in activities which justify the officers in the belief that an escape or destruction of evidence is being attempted .

State v. Dickey, 41 FLW 2301B, (1st District)

The defendant provided the deputy with a false name given under circumstances where he was not detained or under arrest, i.e., in a consensual encounter. The defendant was concededly unlawfully detained, handcuffed, and patted down. Within a minute and a half after this, through a records check the deputy discovered the defendant had an outstanding arrest warrant. A search incident to arrest revealed cocaine on the defendant's person. The trial court granted the defendant's motion to suppress. On appeal the issue was "whether the taint of the deputy's unlawful actions was purged by the discovery of Appellee's outstanding arrest warrant."

The United States Supreme Court has held that in these cases three factors should be considered: (1) the time elapsed between the illegality and the acquisition of the evidence; (2) the presence of intervening circumstances; and (3) the purpose and flagrancy of the official misconduct. The First DCA held here that "*the brief time that elapsed between the illegality and the acquisition of the contraband supports a finding that the search that yielded the contraband was not attenuated from the illegal conduct. However, … this first factor, standing alone, is not dispositive.*

As for the second Brown factor, we conclude that Appellee's outstanding arrest warrant constituted an intervening circumstance. Notwithstanding such, we agree with Appellee that because the evidence establishes that the deputy's

unlawful seizure of his wallet was done in order to ascertain his identity, we are unable to say that the contraband found in a search incident to the outstanding arrest warrant was sufficiently distinguishable from the illegal detention, patdown, and seizure to be purged of the taint of the illegal actions. We agree with the Arizona Supreme Court that "[i]f the purpose of an illegal stop or seizure is to discover a warrant -- in essence, to discover an intervening circumstance -- the fact that a warrant is actually discovered cannot validate admission of the evidence that is the fruit of the illegality. … (H)ere , the deputy, a law enforcement officer with more than two decades of experience, unlawfully detained Appellee and patted him down after which he unlawfully seized Appellee's wallet due to his belief that Appellee provided a false name during a consensual encounter. … In this case, the contraband that was ultimately discovered on Appellee's person was found as a direct result of the deputy's exploitation of his illegal actions. … This, coupled with the fact that only a minute-and-a-half elapsed between the unlawful detention and search incident to the outstanding arrest warrant, has led us to conclude that suppression in this case was proper."

J.A.W. v. State, 41 FLW D2227a, (2nd District)

The appellant juvenile in this case, a student at Sarasota High School, posted the following tweets over a span of several days:

·"can't WAIT to shoot up my school";
·"it's time" (this tweet included a photo of a gun being put in a backpack);
"My mom and dad think I'm serious about shooting up my school I'm dying";
·"school getting shot up on a Tuesday";
·"night f[***]ing sucked can't wait to shoot up my school soon";
·"I sincerely apologize to anyone who took me seriously. I love my high school and honestly own no weapons to want to harm anyone in any way."

In these tweets, J.A.W. mentioned @Duhssault, a group of his friends who did not live in Florida and were not students at Sarasota High School. J.A.W. later maintained that the tweets were meant as a joke shared to this group of friends who often joked about being unfairly stereotyped as potentially violent based on their interest in video games and rock music. He expressed disbelief that anyone would take the tweets as a serious threat.

The Second DCA reversed the juvenile's conviction for sending written threats to kill or do bodily injury under section 836.10, Florida Statutes, holding: "*We hold that the plain and unambiguous meaning of section 836.10 requires a showing that the threat was sent directly to the potential victims or their family members. Here, the State did not present any evidence that J.A.W.'s threat was received directly by any students or staff at Sarasota High School or any of their family members. Rather, J.A.W. publicly posted the threat, it was retweeted, it was discovered by* (a Twitter follower), *and it was finally relayed to the school. Considering these facts, the receipt of the threat by the school was simply too far removed from the original context in which it was posted to support J.A.W.'s disposition for sending written threats to kill or do bodily injury*."

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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