

The Rap Sheet

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Subcommittee are listed
on the back page**

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Summary of PPCC Meeting December 16th, 2015

Agencies represented: SAO, Miami-Dade PD, Miami PD, Miami Beach PD, Hialeah PD, Coral Gables PD, FDLE, Sunny Isles Beach PD, Homestead; Bal Harbour PD, Surfside PD and Opa Locka PD,

Agenda Items

Defendant's Identifying/Contact Information – Whenever possible, an arrest affidavit should include all known identifying and contact information of a defendant, including cell phone number, as such information can lead to additional evidence.

Victim/Witness Sworn Statements – Some police departments are obtaining sworn statements from civilian victims and witnesses. Such statements can be used in lieu of a pre-filing conference if they include material information that will help us determine whether the case can be proven beyond a reasonable doubt. In a burglary case, the victim's statement would include the point of entry, damage to the dwelling, building or vehicle, if any, an enumeration of what was missing and its value, whether the victim knows defendant, whether anyone was authorized to enter the victim's dwelling, building or vehicle and to remove property therein. In a case where the subject was identified by a civilian, the civilian must include in his/her sworn statement, an indication that he/she positively identified the defendant (#____) from a line-up or a group of photographs, shown to him/her by the detective. In a DNA case, the victim must state whether the sample recovered at the burglarized scene was present when he/she left the scene prior to the burglary, etc.

IMPORTANT!

Next PPCC meeting, **Wednesday, January 20, 2016**
State Attorney's Office • 1350 NW 12 Avenue • Miami FL 33136
All are invited to attend

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Automated A-Forms – About 87% of all arrest affidavits were submitted electronically in November 2015.

Case Law Discussed

Recent Case Law

Compiled by Felony Screening Unit Chief Joe Robinson

State v. Pullen, 5th Dist.

This case affirms the precept that police must only administer *Miranda* warnings to a suspect who is both in custody and subjected to interrogation.

Here, the police went to the defendant's workplace to question him about some criminal allegations against him. He spoke with the detectives about the allegations, denying the substance of the victim's claims. After failing to show up for a follow-up appointment at the police station, the detectives returned to his workplace. The defendant informed them he had hired an attorney. As the detectives were leaving, the defendant then spoke up, asking them about the investigation. The defendant eventually made admissions to the officers.

In court, the defendant contended that even if he reengaged the detectives in conversation about the offense, they had an obligation under *Miranda* to inform him of his right to have an attorney present during his interrogation. The Fifth District Court of Appeal disagreed, overruling the trial court, citing the Florida Supreme Court: "*Miranda's safeguards were intended to protect the Fifth Amendment right against self-incrimination by countering the compulsion that inheres in custodial interrogation. '[T]he presence of both a custodial setting and official interrogation is required to trigger the Miranda right-to-counsel prophylactic... [A]bsent one or the other, Miranda is not implicated.*"

K.W. v. State, 5th Dist.

The police responded to an indecent exposure complaint at an apartment complex. After a security guard indicated the juvenile defendant was the subject of the complaint, the police approached him and asked him to place his bookbag on the ground while speaking with him. The defendant did so and the police determined the complaint was unwarranted. The security officer asked for a trespass warning to be issued, which the officer did. The officer then asked the defendant for consent to search the bookbag. The opinion then describes what occurred: "*Appellant stepped back and looked around over his shoulders, but did not say anything to Garner. After Appellant failed to respond to Garner's second and third requests for permission to search the backpack, Garner picked up the backpack and said 'I'm going to search your bag now, is that okay with you?' Appellant did not respond verbally, and, according to Garner, made no gestures either. Deputy Meadows testified that Appellant 'kind of shrugged his shoulders like to indicate that he didn't care.' As Garner opened the bag, he stated that he appreciated Appellant's consent to search the bag. Appellant remained silent, did not attempt to take his bag away from Garner, and did not make any other gestures during the search. Garner found a baggie of marijuana inside Appellant's bag, along with two cigars, one of which was altered and stuffed with marijuana. First, the trial court found that by placing his backpack on the ground, as requested by the deputy sheriff, and then stepping back from the bag during the search, Appellant abandoned his property, in the same fashion that somebody may throw out a baggie of contraband from a car.*

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Thus, reasoned the trial court, the deputies did not need consent to search the “abandoned” bag. Second, the trial court found that the search of the bag was undertaken for officer safety even though neither deputy claimed that rationale. However, the trial court never ruled directly on whether Appellant consented to the search of his bag.

The Fifth District Court of Appeal held that any officer safety concerns, under these facts, did not rise to the level justifying a warrantless search of the bookbag. The 5th DCA also determined there was no evidence supporting a finding the defendant had abandoned the bookbag, that the defendant’s stepping away from the bookbag was “*at most an ambiguous, nonverbal action that is more consistent with recognizing the deputy’s exercise of authority, than with an attempted abandonment.*”

The appellate court remanded the case back to the trial court to determine if the defendant’s actions amounted to an unequivocal and voluntary consent to search the bookbag.

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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