

The Rap Sheet

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Against Law
Enforcement Officers
Subcommittee are listed
on the back page**

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Summary of PPCC Meeting October 21st, 2015

Agencies represented: SAO, Miami-Dade PD, Miami PD, Miami Beach PD, Coral Gables PD, Aventura PD, Pinecrest PD, South Miami PD; South Miami PD; Sunny Isles Beach PD, Medley; Homestead:

Agenda Items

Referring Victims to the SAO

Complainants alleging a misdemeanor crime should not be referred to the SAO when an officer, having spoken to both the complainant and the subject, is unable to determine probable cause for an arrest. Under these circumstances, Criminal Intake will not open or file such case.

Charges/Automated A-Forms

The Domestic Violence Unit, the Sexual Battery Unit, the Felony Screening Unit and County Court have asked that we remind officers to ensure that they input the correct charges when completing an automated arrest affidavit. There may be several charges listed under a particular subsection and an officer must affirmatively choose the appropriate charge. Charges are coming in as attempts or conspiracies to commit a crime when the case involves a completed crime. Choosing a lesser charge may allow a defendant to bond out on a non-bondable offense; alternatively, choosing a higher charge will result in having a defendant pay a higher bond amount. Neither result is acceptable. Sergeants who are tasked to approve these a-forms must ensure that the appropriate charge is listed on the a-form.

The County's ITD recently sent the following list of A-Form common errors to police departments:

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IMPORTANT!

Next PPCC meeting, **Wednesday, December 16, 2015.**
State Attorney's Office • 1350 NW 12 Avenue • Miami FL 33136
All are invited to attend

A-Form Users Common Errors

Incomplete/invalid mailing address for defendant, witness, and/or victims:

- The complete permanent and local mailing addresses for defendants, witnesses and/ victims must be entered in the A-Form including: city, state and zip code for US residents.
- DO NOT use intersection locations as mailing address.
- If the defendant's address is not provided and is a Homeless individual or the address is Unknown, the appropriate box for these two options must be selected in the application.
- When the mailing address is not valid, the court subpoenas and other notifications CAN'T be sent to the parties involved resulting in failing court appearances and warrant issues.

Traffic Warrants (BW/AW) selected as Local Warrants:

- Traffic warrants must be selected from the Traffic category drop down list instead of from Local/Other Bench warrants. This will check the warrant and Traffic boxes on top of the A-Form and it will be submitted to the Clerk of the Court (COC) SPIRIT system for further processing.
- Incorrect Florida Statute is selected:
- Verify that the statute selected is the correct one according with the statute type, degree and description. Example (F) – 1 – 782.04(1) Murder 1st Degree
- Statutes Types: L=Local Municipal Ordinance, C=County Ordinance, T=Traffic, M=Misdemeanor, F=Felony. Degrees: 1, 2, 3, C, L.

Additional Comment should be used for a brief information and not to replace the narrative of the A-Form.

Juvenile Referrals:

- Do not select the REFERRAL box if the Juvenile is going to be transported to the Juvenile Services Department (JSD) for processing.
- A-Forms identified as Referrals are submitted automatically to the SAO for processing and can't be used for booking purposes by JSD.
- Additional A-Form for Juveniles:
- If the Juvenile has already been booked by JSD, please submit any additional A-Form as REFERRAL with the Proposed JAC number.
- SAO and COC will process this A-Form ASAP and the charges will be added to the juvenile's booking record.

Presentation by ASA Brenda Mezick- ASA Mezick discussed and asked for the support of PPCC attendees for a petition aimed at protecting under age victims from being deposed and being re-victimized by being forced to relieve the trauma. Recently, two children in a sex trafficking case attempted to commit suicide after being deposed. The Federal Government and 44 other states don't allow children to be deposed by right; Florida does. Currently, a bill to protect children is under consideration in the Florida Legislature. Your support would be greatly appreciated; you can sign the petition and/or you can reach out personally to Florida legislators. Officers who are interested in signing the petition can use their work address instead of their home address. A copy of the petition is attached.

ASA Mezick also advised attendees that the State attorney is spearheading the creation of a committee to oversee digital evidence training for Miami-Dade officers. With the rapid advancement of technology, there is a need to work together to establish a protocol for the training of all local police officers. More details to follow

Retail Theft Cases - All regular retail theft cases should be charged under the general theft statute, 812.014. The retail theft statute, 812.015 should only be used under the following circumstances:

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815.015 (8):

Except as provided in subsection (9), a person who commits retail theft commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084, if the property stolen is valued at \$300 or more, and the person:

- a) Individually, or in concert with one or more other persons, coordinates the activities of one or more individuals in committing the offense, in which case the amount of each individual theft is aggregated to determine the value of the property stolen;
- b) Commits theft from more than one location within a 48-hour period, in which case the amount of each individual theft is aggregated to determine the value of the property stolen;
- c) Acts in concert with one or more other individuals within one or more establishments to distract the merchant, merchant's employee, or law enforcement officer in order to carry out the offense, or acts in other ways to coordinate efforts to carry out the offense; or
- d) Commits the offense through the purchase of merchandise in a package or box that contains merchandise other than, or in addition to, the merchandise purported to be contained in the package or box.

815.015 (9):

(9) A person commits a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084, if the person:

- a) Violates subsection (8) and has previously been convicted of a violation of subsection (8); or
- b) Individually, or in concert with one or more other persons, coordinates the activities of one or more persons in committing the offense of retail theft where the stolen property has a value in excess of \$3,000.

Loss Prevention Officers

Loss Prevention Officers are not legally required to co-sign an arrest affidavit. Although this can be done with a paper a-form, there is no feature in the automated system that allows more than one person to sign an a-form.

Battery on the Elderly, Child Abuse/Neglect and Sexual Battery Cases involving Minor Victims

The age of such victims must be specifically alleged in the narrative. As to minor victims and witnesses, their initials and not full names should be listed in the Arrest affidavit narrative.

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.

Legislative Update Discussed

Next PPCC meeting – Wednesday, December 16, 2015

Recent Case Law

Compiled by Felony Screening Unit Chief Joe Robinson

R.C.R., a Child, Appellant, v. STATE OF FLORIDA, (4th Dist.)

The juvenile defendant was arrested and, due to resisting arrest, was hobbled and placed in handcuff, in the rear of a police car. After transport to a hospital and then a juvenile assessment facility, the transporting officer found a baggie of cocaine wedged between the rear seat and the doorframe. The facts continue“:

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The deputy testified that she did not see it earlier because of the angle she was standing when she opened the door and because it was dark outside. The deputy photographed the baggie and then field-tested the substance in the bag, which tested positive for cocaine. She did not test it for fingerprints or DNA (here, this may have been fatal to a successful prosecution).

The deputy never saw Appellant with a baggie of cocaine, but she testified that the baggie was not there when she checked her vehicle at the beginning of her shift and Appellant was the only person in her patrol car that day. No one had been in the back of the car for five days prior. The deputy testified that the baggie did not belong to her.”

The appellant was convicted of possession of cocaine after a bench trial. The Fourth District Court of Appeal reversed the conviction, holding the State had failed to prove actual or constructive possession by the juvenile. On appeal, the State had (curiously) argued that the juvenile was in actual possession of the cocaine. The 4th DCA brushed this argument aside quickly.

As to constructive possession, the court set out the basic principles (citations omitted):

“In regards to constructive possession, we have explained, constructive possession exists where a defendant does not have actual physical possession of contraband but knows of its presence on or about his premises and has the ability to exercise dominion and control over it. Mere proximity to contraband, standing alone, is insufficient to establish constructive possession of the substance. The state must present independent proof of the defendant’s knowledge and ability to control the contraband.

When the defendant has exclusive possession of the area where the contraband is found, “the defendant’s knowledge of the contraband and ability to maintain control over it may be presumed” for purposes of constructive possession.. In the possession context, we have construed the term “exclusive” to mean “vested in one person alone.”

In the case of jointly-occupied premises, the knowledge and ability to control elements will not be inferred and must be established by independent proof..

Such proof may consist either of evidence establishing that the accused had actual knowledge of the presence of the contraband, or of evidence of incriminating statements and circumstances, other than the mere location of the substance, from which a jury might lawfully infer knowledge by the accused of the presence of the contraband on the premises. Additionally, the knowledge element “may be satisfied where the contraband is found in plain view in a common area of the premises.”

The 4th DCA then went on to explain why the State failed to prove constructive possession: “the first issue is thus whether Appellant had exclusive control of the area where the contraband was found. The facts are not in favor of finding exclusive control under our definition. Control of the backseat of the patrol car was not vested in Appellant alone. ... While the deputy testified that she checked her vehicle the morning of her shift and the contraband was not there, there is no testimony as to when the baggie was placed in the car; and, even though no other arrestees were in the backseat during Appellant’s arrest, multiple officers had access to the backseat (and specifically the area between the seat and the door jamb) during the range of potential time that the baggie could have been placed there. Additionally, the deputy was in control of her vehicle the entire time, further making Appellant’s control only jointly held. Therefore, without exclusive control, the elements of knowledge and control cannot be presumed to find constructive possession.

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From the evidence presented, there was no independent proof showing that Appellant ever had knowledge of the presence of the contraband. ... There was no testimony that Appellant ever possessed any cocaine or that he had seen the baggie in the door jamb or that his statements otherwise indicated that he knew of its presence. To the contrary, the deputy testified that she never saw Appellant with any contraband, and Appellant testified that he was never in possession of cocaine, nor did he see any cocaine that night.

In a case where an appellate court is reviewing the sufficiency of the evidence, the standard of review is “If, after viewing the evidence in the light most favorable to the State, a rational trier of fact could find the existence of the elements of the crime beyond a reasonable doubt, sufficient evidence exists to sustain a conviction.” This court set out this standard, but then seemingly ignored it, substituting their judgment and view of the evidence over the trial judge.

STATE OF FLORIDA, Appellant, v. COREY JOHN CARTER, Appellee. Fifth District Court of Appeal

The 5th DCA reversed the trial court’s ruling suppressing statements by the defendant in a recorded interview with a police detective. The defendant had told the detective he “should wait to talk to my public defender” but wanted to “tell the truth – the whole truth”.

The interview continued: *Detective Brunner advised Carter more than once that he was not obligated to talk with her, and that she would end the interview any time he wanted. However, Carter continued to indicate that he might want to talk:*

I mean I do [want to talk], but I don't think I should. I want to, but --

Shortly following this exchange, Carter spontaneously asked whether police had found “the other guy.” When Detective Brunner answered in the affirmative, Carter began to discuss the incident. Detective Brunner interrupted Carter to confirm that he wanted to proceed with the interview:

Do you wanna just let me read you your rights, and then you can decide whether or not you're gonna talk or -- or not?

After being advised of his Miranda¹ rights, Carter agreed to waive those rights and give a statement.

The 5th DCA held this to not be an unequivocal request for an attorney, and that he did not make an unequivocal or unambiguous invocation of his right to remain silent.

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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