FOR THE LAW ENFORCEMENT AGENCIES OF MIAMI-DADE COUNTY

The Rap Sheet

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September 2015

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Members of the Crimes Against Law 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, Aventura PD, Miami Beach PD, Coral Gables PD, South Miami PD, Sunny Isles Beach PD, Surfside PD, Biscayne Park PD, Miami Springs PD, Pinecrest PD, Miami gardens PD, Homestead PD, University of Miami PD and Bay Harbor Island PD.

Agenda Items

Domestic Crimes Presentation by DCU Asst. Chief Elyse Targ

Asst. Chief Targ reminded officers of the following:

1. Officers need to be very careful when selecting the appropriate charge in the new electronic system. Before the A-form is transmitted, the officer should get a preview of it. We are finding that a-forms come in with the D being charged with an attempt to commit the crime, when in fact, the crime has been committed. The officer should look up the actual statute number to make sure he/she has made the correct selection. In cases where a first degree felony punishable by life is charged, such as Burg with an asst./battery, kidnapping, or armed robbery, the form should reflect an F1, the title of the charge and then the letters pbl.
2. If the officer is charging battery by strangulation, the officer must include in the statement of facts that the Victim's breathing was impeded.

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IMPORTANT!

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

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3. If the officer is going to charge battery on a pregnant female, the officer needs to put in the statement of facts that the Victim is visibly pregnant, or the Defendant knew that the Victim was pregnant.
4. In elderly cases and in child abuse or neglect cases, the statement of facts needs to have the Victim's age in the body of the arrest affidavit; having the date of birth on the back of the a-form is not enough.

Automated A-Forms

The number of arrest affidavits transmitted electronically continues to increase. Last month, 68% of all adult arrest affidavits were transmitted electronically, a 20% increase from April stats.

Case Law Discussed

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.

G.M., a child, Appellant, v. STATE OF FLORIDA, Fourth District

In this case, the Fourth District Court of Appeals was asked to review the pat-down frisk and ultimate seizure of a bag of cannabis in the defendant's pocket. The defendant juvenile was a passenger in a car reported to be stolen. Along with the driver, the defendant was removed from the vehicle, handcuffed and placed in the rear of a police car while the investigation of the stolen car and their involvement ensued. The officer testified at the motion to suppress that he had no reason to believe the defendant was armed with a weapon, saw no bulge or any behavior by the defendant to indicate he was armed and dangerous. The officer stated the defendant was frisked pursuant to Broward Sheriff's Office policy that anyone being detained in a police vehicle must be frisked first. During the frisk he felt a baggie with a "plant-like material" inside appellant's pocket during his pat-down search for weapons. He admitted that he had "no clue what type of plant it was at the time," and, only claimed that he thought it was marijuana based on his "training and experience."

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The 4th DCA upheld the legality of the frisk itself, holding that "(I)*n the instant case appellant was removed from the stolen car, placed in handcuffs during the course of the investigation, and seated in the back of the police vehicle. At this point, although he was not under arrest, the police did have reason to investigate appellant's involvement in a potential criminal activity, and it was proper to initially place him in handcuffs in a patrol car while doing so. [P]olice may properly handcuff a person whom they are temporarily detaining when circumstances reasonably justify the use of such restraint."). Under such circumstances, a limited pat-down for weapons was not unreasonable*."

However, the search of the defendant's pocket was ruled violative of the Fourth Amendment: *"In the instant case, the officer stated that he felt a baggie with a "plant-like material" inside appellant's pocket during his pat-down search for weapons. He admitted that he had "no clue what type of plant it was at the time," and, only claimed that he thought it was marijuana based on his "training and experience." There was no testimony that by plain feel the officer was able to develop anything more than an inkling that the bag he felt in appellant's pocket, which did not create a bulge in the clothing, would contain contraband. In other words, the officer's perception that the material in the plastic bag was contraband did not come as a result of his tactile perception, but from an educated hunch based upon the plain feel of the object."*

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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