

The Rap Sheet

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Enforcement Officers
Subcommittee are listed
on the back page**

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Summary of the May 2016 PPCC Meeting

Agencies represented: SAO, Miami-Dade PD, City of Miami PD, Miami Beach PD, Hialeah PD, Aventura PD, Sunny Isles Beach PD, Surfside PD, Coral Gables PD, Homestead PD; Miami Gardens PD, Medley PD, University of Miami PD and Pinecrest PD.

Agenda Items

- 1. Case Filing Decisions** - A case will be filed when an ASA determines that the charges can be proven beyond and to the exclusion of all reasonable doubt. However, if an officer disagrees with a filing decision, he or she can request that the filing decision be reviewed by the ASA's supervisor or another ASA.
- 2. Spontaneous Statements** - Occasionally, officers classify a statement as spontaneous when the circumstances don't support that characterization. A spontaneous statement is one that is not made in response to police interrogation but is volunteered by the subject. A true spontaneous statement can be used against the subject without the benefit of *Miranda* warnings. If you are questioning the defendant regarding a specific act and he blurts out an admission regarding a different act, there is an argument to be made that this is not a spontaneous statement as it was made pursuant to police questioning. While officers do not need to issue Miranda Warnings to ask a subject about biographical information, if that officer goes into any other area of questioning, statements made in response to such questioning will not be viewed as spontaneous. Also, a spontaneous statement may need to be pursued if is not enough to prove a particular charge.
- 3. Sworn Statement Forms** - Sample forms were provided.
- 4. Child Abuse** - When a person batters a child and such action is clearly not done for disciplinary reasons, it constitutes child abuse and not simple battery.
- 5. SAO Case Screening Phone Number** - The number to call to schedule a pre-filing conference is (305) 547-0200. It is staffed 24 hours a day 7 days a week. Any other number may not be answered or transferred.

IMPORTANT!

Next PPCC meeting, Wednesday, September 28, 2016
State Attorney's Office • 1350 NW 12 Avenue • Miami FL 33136
All are invited to attend

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6. Arrest Involving Related Cases- when a defendant is arrested for one offense and then there is a subsequent charge (e.g.,) battery on the arresting officers or resisting arrest with violence or perhaps drugs are found on the defendant later at the station, it is preferable to have all charges filed under one police report for efficiency reasons. When such cases are separated, eventually we have to consolidate them after each individual case is filed.

7. Surveillance Videos – Evidence of a crime may not be found at the scene. When there is no video at the scene of a crime, be sure to check for video cameras in the surrounding areas and also check for red light cameras.

Case Law

Prepared by Assistant State Attorney Robert Fiallo

WITNESSES QUALIFIED TO OFFER OPINION TESTIMONY IDENTIFYING DEFENDANT, WHO WAS DEPICTED IN A SURVEILLANCE VIDEO, AS THE PERPETRATOR OF CRIME.

Quaknine v. State, 189 So.3d 290 (Fla. 4th DCA 2016)

The victim and the detective testified that the individual in the surveillance video was the defendant (Quaknine). “The victim and the detective were familiar with the defendant through multiple interactions leading up to the incident. The victim testified that she lived across the street from the defendant’s motel and had spoken with her and seen her coming and going for years. Similarly, the detective had interacted with the defendant numerous times in the past. Accordingly, it was clear at trial that both witnesses were in better positions than the jurors to identify the defendant in the video.”

Quaknine argued that the trial court erred “in permitting the witnesses to opine that she is the woman depicted in the surveillance video because the determination of such facts is within the ordinary experience of jurors and therefore for the jury alone to decide.”

The court held that under some circumstances, a lay witness may provide identifications of individuals in recordings: “Even non-eyewitnesses may testify as to the identification of persons depicted or heard on a recording so long as it is clear the witness is in a better position than the jurors to make those determinations.” (Citations omitted)

DUI ARREST OUTSIDE THE LEO’S TERRITORIAL JURISDICTION/MUTUAL AID/CITIZENS ARREST.

Mattos v. State, ---So.3d--- (Fla. 4th DCA 2016), 2016 WL 4445940

An officer was dispatched to a call of a driver passed out behind the wheel of a vehicle, and located the vehicle idling in a lane of traffic. The vehicle was located outside of the boundary line of the officer’s territorial jurisdiction. The officer subsequently arrested the driver (Mattos) for misdemeanor DUI. Mattos appealed, arguing that the officer was outside his territorial jurisdiction and had no authority to make the arrest, and that the officer had not observed any driving pattern which would constitute a breach of the peace and that the officer lacked probable cause. The State argued that the extra-territorial arrest was legal, on grounds that the officer was acting under a mutual aid agreement, and that Mattos had committed a breach of the peace, justifying a citizen’s arrest on the part of the officer.

The court dismissed the mutual aid/territorial jurisdictional argument, finding that while the officer testified there was a mutual aid agreement between the municipalities, he was “completely unaware of the contents of the agreement” and the state failed to introduce the agreement, or any competent evidence as to the substance of the agreement between the two municipalities.

As to the citizen’s arrest for breach of the peace, at common law, a private citizen may arrest a person for a felony or a breach of the peace if it is committed in their presence.

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Additionally, law enforcement officers making citizen's arrests, based on common law principles, cannot be acting "under color of law". The doctrine of "under color of law" prevents law enforcement officers from using the powers of their office to observe unlawful activity or gain access to evidence not available to a private citizen. It should be viewed as a limitation on the power of police to conduct investigations and to gather evidence outside their jurisdiction. However, just because officers are in uniform or otherwise clothed with the indicia of their position when making a citizen's arrest, does not invalidate the arrest.

The court found that the DUI arrest was based on a breach of the peace, and that the facts in this case posed a threat to the safety and order of the public.

The court held that the officer acted under color of law while conducting the DUI investigation. Conducting field sobriety exercises and administering a breathalyzer test cannot be performed by private citizens. The evidence gained during those actions was obtained "under color of law."

As to the argument that the officer did not have probable cause to make the arrest, the court held that probable cause is not necessary when making a citizen's arrest.

The court reversed in part and affirmed in part, suppressing the field sobriety exercises and the breathalyzer test, as they were conducted "under color of law", but affirmed as to the breach of the peace. The court remanded, giving Mattos the opportunity to withdraw his plea.

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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